CHAPTER 22 Cabinet Committees

The Cabinet works through various committees. These committees are called as Cabinet Committees. The features, list and functions of these committees are explained below.

FEATURES OF CABINET COMMITTEES

The following are the features of Cabinet Committees:

1. They are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.
2. They are of two types—standing and *ad hoc*. The former are of a permanent nature while the latter are of a temporary nature. The *ad hoc* committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed.[1]
3. They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition varies from time to time.
4. Their membership varies from one committee to another committee. They usually include only Cabinet Ministers. Sometimes, the non-cabinet ministers can also be appointed as their members. Further, the non-cabinet ministers can also attend the meetings of the Cabinet Committees as special invitees.
5. They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.
6. They are mostly headed by the Prime Minister. Some times other senior Cabinet Ministers also acts as their Chairman. But, in case the Prime Minister is a member of a committee, he/she invariably presides over it.
7. They not only sort out issues and formulate proposals for the consideration of the Cabinet, but also take decisions. However, the Cabinet can review their decisions.
8. They are an organisational device to reduce the enormous workload of the Cabinet. They also facilitate in-depth examination of policy issues and effective coordination. They are based on the principles of division of labour and effective delegation.

LIST OF CABINET COMMITTEES

At present, the following 8 Cabinet Committees are functional:

1. Cabinet Committee on Political Affairs
2. Cabinet Committee on Economic Affairs
3. Appointments Committee of the Cabinet
4. Cabinet Committee on Parliamentary Affairs
5. Cabinet Committee on Security
6. Cabinet Committee on Accommodation
7. Cabinet Committee on Investment and Growth
8. Cabinet Committee on Employment and Skill Development

[1] For example, the Emergency Committee was set-up in 1962 after the Chinese invasion.

FUNCTIONS OF CABINET COMMITTEES

The following are the functions of the cabinet committees:

1. The Cabinet Committee on Political Affairs deals with all policy matters pertaining to domestic and foreign affairs.
2. The Cabinet Committee on Economic Affairs directs and coordinates the governmental activities in the economic sphere.
3. The Appointments Committee of the Cabinet decides all higher level appointments in the Central Secretariat, Public Enterprises, Banks and Financial Institutions.
4. The Cabinet Committee on Parliamentary Affairs looks after the progress of government business in the Parliament.
5. The Cabinet Committee on Security deals with all issues relating to defence, law and order, internal security and atomic energy.
6. The Cabinet Committee on Accomodation deals with all issues regarding the allotment of government accomodation to the Members of Parliament, central government employees, other persons and various organisations.
7. The Cabinet Committee on Investment and Growth deals with all policy matters aimed at accelerating capital inflows, export promotion, import substitution and improving ease of doing business.
8. The Cabinet Committee on Employment and Skill Development deals with all issues related to developing skills, enhancing employability of workforce and increasing women workforce participation.

Of all the Cabinet Committees, the most powerful is the Political Affairs Committee, often described as a "Super-Cabinet".

GROUPS OF MINISTERS

In addition to cabinet committees, several Groups of Ministers (GoMs) are constituted to look into different issues/subjects. Some of these GoMs are empowered to take decisions on behalf of the Cabinet whereas the others make recommendations to the Cabinet.[2]

The institution of GoMs has become a viable and effective instrument of coordination among the ministries. These are *ad hoc* bodies formed to give recommendations to the cabinet on certain emergent issues and critical problem areas. Ministers heading the concerned ministries are inducted into the relevant GoMs and when the advice is crystallised they are disbanded.[3]

The Second Administrative Reforms Commission of India (2005–2009) made the following observations and recommendations with respect to the working of the GoMs[4]:

1. The Commission observed that the constitution of a large number of GoMs has resulted in many GoMs not being able to meet regularly to complete their work thus leading to significant delays on many major issues.
2. The Commission felt that more selective use of the institution of GoMs would perhaps lead to more effective coordination particularly if they are empowered to arrive at a decision on behalf of the Cabinet with time limits that are prescribed for completing the work entrusted to them.
3. The Commission recommended that there is need to ensure that the existing coordination mechanism of GoMs function effectively and helps in early resolution of issues. Selective, but effective use of GoMs with clear mandate and prescribed time limits would be helpful.

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[2]Second Administrative Reforms Commission, Government of India, Report on Organizational Structure of Government of India, 2009, p. 136. This commission was headed by Veerappa Moily, a senior Congress leader and former Karnataka Chief Minister.

[3]Ramesh K. Arora and Rajni Goyal, *Indian Public Administration*, New Age International Publishers, Third Edition, 2013, pp. 238–239.

[4]Second Administrative Reforms Commission, Government of India, Report on Organisational Structure of Government of India, 2009, pp. 136–137 and 140.

CHAPTER 23 Parliament

The Parliament is the legislative organ of the Union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of the parliamentary form of government, also known as 'Westminster' model of government[1].

Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

ORGANISATION OF PARLIAMENT

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively. The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole.

Though the President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he/she is an integral part of the Parliament. A bill passed by both the Houses of Parliament cannot become law without the President's assent. He/she also performs certain functions relating to the proceedings of the Parliament, for example, he/she summons and pro-rogues both the Houses, dissolves the Lok Sabha, addresses both the Houses, issues ordinances when they are not in session, and so on.

In this respect, the framers of the Indian Constitution relied on the British pattern rather than the American pattern. In Britain, the Parliament consists of the Crown (King or Queen), the House of Lords (Upper House) and the House of Commons (Lower House). By contrast, the American President is not an integral part of the legislature. In USA, the legislature, which is known as Congress, consists of the Senate (Upper House) and the House of Representatives (Lower House).

The parliamentary form of government emphasises on the interdependence between the legislative and executive organs. Hence, we have the 'President-in-Parliament' like the 'Crown-in-Parliament' in Britain. The Presidential form of government, on the other hand, lays stress on the separation of legislative and executive organs. Hence, *the American President is not regarded as a constituent part of the Congress.*

COMPOSITION OF THE TWO HOUSES

Composition of Rajya Sabha

The maximum strength of the Rajya Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the President.

[1] Westminster is a place in London where the British Parliament is located. It is often used as a symbol of the British Parliament.

At present, the Rajya Sabha has 245 members. Of these, 225 members represent the states, 8 members represent the union territories and 12 members are nominated by the President.

The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.

1. Representation of States The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 members while Tripura has 1 member only. However, in USA, all states are given equal representation in the Senate irrespective of their population. USA has 50 states and the Senate has 100 members—2 from each state.

2. Representation of Union Territories The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the eight union territories, only three (Delhi, Puducherry and Jammu & Kashmir) have representation in Rajya Sabha. The populations of other five union territories are too small to have any representative in the Rajya Sabha.

3. Nominated Members The President nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha without going through the process of election. It should be noted here that the American Senate has no nominated members.

Composition of Lok Sabha

The maximum strength of the Lok Sabha is fixed at 550. Out of this, 530 members are to be the representatives of the states and 20 members are to be the representatives of the union territories.

At present, the Lok Sabha has 543 members. Of these, 524 members represent the states and 19 members represent the union territories.

1. Representation of States The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

2. Representation of Union Territories The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Sabha from the union territories are also chosen by direct election.

3. Nominated Members Before 2020, the President nominated two members from the Anglo-Indian community[2] to the Lok Sabha, if the community was not adequately represented. Originally, this provision was to operate for ten years (i.e., upto 1960) only. Later, this duration has been extended continuously since then by ten years each time. The

[2]An Anglo-Indian is a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not merely established there for temporary purposes.

last extension upto 2020 was made by the 95th Amendment Act, 2009. But, the 104th Amendment Act, 2019, has not extended further the operation of this provision. In other words, the Amendment discontinued this provision of special representation of the Anglo-Indian community in the Lok Sabha by nomination. Consequently, this provision ceased to have effect on the 25th January, 2020.

The allocation of seats in Parliament (both the Rajya Sabha and the Lok Sabha) for states and union territories is given in Table 23.5.

SYSTEM OF ELECTIONS TO LOK SABHA

The various aspects related to the system of elections to the Lok Sabha are as follows:

Territorial Constituencies

For the purpose of holding direct elections to the Lok Sabha, each state is divided into territorial constituencies. In this respect, the Constitution makes the following two provisions:

1. Each state is allotted a number of seats in the Lok Sabha in such a manner that the ratio between that number and its population is the same for all states. This provision does not apply to a state having a population of less than six millions.
2. Each state is divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.

In brief, the Constitution ensures that there is uniformity of representation in two respects: (a) between the different states, and (b) between the different constituencies in the same state.

The expression 'population' means the population as ascertained at the preceding census of which the relevant figures have been published.

Readjustment after each Census

After every census, a readjustment is to be made in (a) allocation of seats in the Lok Sabha to the states, and (b) division of each state into territorial constituencies. Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, the Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.

The 42nd Amendment Act of 1976 froze the allocation of seats in the Lok Sabha to the states and the division of each state into territorial constituencies till the year 2000 at the 1971 level. This ban on readjustment was extended for another 25 years (ie, upto year 2026) by the 84th Amendment Act of 2001, with the same objective of encouraging population limiting measures.

The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalisation of territorial constituencies in the states on the basis of the population figures of 1991 census. Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the number of seats allotted to each state in the Lok Sabha.

Reservation of Seats for SCs and STs

Though the Constitution has abandoned the system of communal representation, it provides for the reservation of seats for scheduled castes and scheduled tribes in the Lok Sabha on the basis of population ratios[3].

Originally, this reservation was to operate for ten years (ie, up to 1960), but it has

[3]This means that the number of Lok Sabha seats reserved in a state or union territory for such castes and tribes is to bear the same proportion to the total number of seats allotted to that state or union territory in the Lok Sabha as the population of such castes and tribes in the concerned state or union territory bears to the total population of state or union territory.

been extended continuously since then by 10 years each time. Now, under the 104th Amendment Act of 2019, this reservation is to last until 2030.

Though seats are reserved for scheduled castes and scheduled tribes, they are elected by all the voters in a constituency, without any separate electorate. A member of scheduled castes and scheduled tribes is also not debarred from contesting a general (non-reserved) seat.

The 84th Amendment Act of 2001 provided for refixing of the reserved seats on the basis of the population figures of 1991 census as applied to rationalisation of the general seats. Later, the 87th Amendment Act of 2003 provided for the refixing of the reserved seats on the basis of 2001 census and not 1991 census.

The state-wise reservation of seats for SCs and STs in the Lok Sabha is given in Table 23.5.

First-Past-The-Post System

Though the Constitution has adopted the system of proportional representation in the case of Rajya Sabha, it has not preferred the same system in the case of Lok Sabha. Instead, it has adopted the system of territorial representation (First-past-the-post system) for the election of members to the Lok Sabha.

Under territorial representation, every member of the legislature represents a geographical area known as a constituency. From each constituency, only one representative is elected. Hence such a constituency is known as single-member constituency. In this system, a candidate who secures majority of votes is declared elected. This simple majority system of representation does not represent the whole electorate. In other words, it does not secure due representation to minorities (small groups).

The system of proportional representation aims at removing the defects of territorial representation. Under this system, all sections of the people get representation in proportion to their number. Even the smallest section of the population gets its due share of representation in the legislature.

There are two kinds of proportional representation, namely, single transferable vote system and list system. In India, the first kind is adopted for the election of members to the Rajya Sabha and state legislative council and for electing the President and the Vice-President.

Though some members of the Constituent Assembly had advocated the system of proportional representation for the election of members to the Lok Sabha, the Constitution has not adopted the system due to two reasons.

1. Difficulty for the voters to understand the system (which is complicated) due to low literacy scale in the country.
2. Unsuitability to the parliamentary government due to the tendency of the system to multiply political parties leading to instability in government.

Additionally, the system of proportional representation has the following demerits:

1. It is highly expensive.
2. It does not give any scope for organising by-elections.
3. It eliminates intimate contacts between voters and representatives.
4. It promotes minority thinking and group interests.
5. It increases the significance of party system and decreases that of voter.

DURATION OF TWO HOUSES

Duration of Rajya Sabha

The Rajya Sabha (first constituted in 1952) is a continuing chamber, that is, it is a permanent body and not subject to dissolution. However, one-third of its members retire every second year. Their seats are filled up by fresh elections and Presidential nominations at the beginning of every third year. The retiring members are eligible for re-election and renomination any number of times.

The Constitution has not fixed the term of office of members of the Rajya Sabha and left it to the Parliament. Accordingly, the Parliament in the Representation of the People Act (1951) provided that the term of office of a member of the Rajya Sabha shall be six years. The act

also empowered the President of India to curtail the term of members chosen in the first Rajya Sabha. In the first batch, it was decided by lottery as to who should retire. Further, the act also authorised the President to make provisions to govern the order of retirement of the members of the Rajya Sabha[4].

Duration of Lok Sabha

Unlike the Rajya Sabha, the Lok Sabha is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections, after which it automatically dissolves. However, the President is authorised to dissolve the Lok Sabha at any time even before the completion of five years and this cannot be challenged in a court of law.

Further, the term of the Lok Sabha can be extended during the period of national emergency by a law of Parliament for one year at a time[5] for any length of time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

The durations of the Lok Sabha (from first to present) are mentioned in Table 23.6.

MEMBERSHIP OF PARLIAMENT

Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament:

1. He/she must be a citizen of India.
2. He/she must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose. In his/her oath or affirmation, he/she swears –
   (a) To bear true faith and allegiance to the Constitution of India
   (b) To uphold the sovereignty and integrity of India
3. He/she must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha.
4. He/she must posses other qualifications prescribed by Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He/she must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Sabha and the Lok Sabha. The requirement that a candidate contesting an election to the Rajya Sabha from a particular state should be an elector in that particular state was dispensed with in 2003. In 2006, the Supreme Court upheld the constitutional validity of this change.
2. He/she must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he/she wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualifications

Under the Constitution, a person shall be disqualified for being elected as a member of Parliament:

1. if he/she holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).[6]

[4]Under this, the President has made the Rajya Sabha (Term of Office of Members) Order, 1952.

[5]The term of the fifth Lok Sabha that was to expire on 18 March, 1976, was extended by one year upto 18 March, 1977 by the House of the People (Extension of Duration) Act, 1976. It was extended for a further period of one year up to 18 March, 1978 by the House of the People (Extension of Duration) Amendment Act, 1976. However, the House was dissolved on 18 January 1977, after having been in existence for a period of five years, 10 months and six days.

[6]A minister in the Union or state government is not considered as holding the office of profit. Also, the Parliament can declare that a particular office of profit will not disqualify its holder from parliamentary membership.

2. if he/she is of unsound mind and stands so declared by a court.
3. if he/she is an undischarged insolvent.
4. if he/she is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state; and
5. if he/she is so disqualified under any law made by Parliament.

The Parliament has laid down the following additional disqualifications in the Representation of People Act (1951):

1. He/she must not have been found guilty of certain electoral offences or corrupt practices in the elections.
2. He/she must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
3. He/she must not have failed to lodge an account of his/her election expenses within the time.
4. He/she must not have any interest in government contracts, works or services.
5. He/she must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
6. He/she must not have been dismissed from government service for corruption or disloyalty to the State.
7. He/she must not have been convicted for promoting enmity between different groups or for the offence of bribery.
8. He/she must not have been punished for preaching and practising social crimes such as untouchability, dowry and sati.

On the question whether a member is subject to any of the above disqualifications, the President's decision is final. However, he/she should obtain the opinion of the election commission and act accordingly.

Disqualification on Ground of Defection

The Constitution also lays down that a person shall be disqualified from being a member of Parliament if he/she is so disqualified on the ground of defection under the provisions of the Tenth Schedule. A member incurs disqualification under the defection law:

1. if he/she voluntarily gives up the membership of the political party on whose ticket he/she is elected to the House;
2. if he/she votes or abstains from voting in the House contrary to any direction given by his/her political party;
3. if any independently elected member joins any political party; and
4. if any nominated member joins any political party after the expiry of six months.

The question of disqualification under the Tenth Schedule is decided by the Chairman in the case of Rajya Sabha and Speaker in the case of Lok Sabha (and not by the President of India). In *Kihoto Hollohan* case[7] (1992), the Supreme Court ruled that the decision of the Chairman/Speaker in this regard is subject to judicial review.

Vacating of Seats

In the following cases, a member of Parliament vacates his/her seat.

1. Double Membership A person cannot be a member of both Houses of Parliament at the same time. Thus, the Representation of People Act (1951) provides for the following:

(a) If a person is elected to both the Houses of Parliament, he/she must intimate within 10 days in which House he/she desires to serve. In default of such intimation, his/her seat in the Rajya Sabha becomes vacant.

(b) If a sitting member of one House is also elected to the other House, his/her seat in the first House becomes vacant.

(c) If a person is elected to two seats in a House, he/she should exercise his/her option for one. Otherwise, both seats become vacant.

Similarly, a person cannot be a member of both the Parliament and the state legislature at the same time. If a person is so elected,

[7] *Kihoto Hollohan* vs. *Zachillhu* (1992).

his/her seat in Parliament becomes vacant if he/she does not resign his/her seat in the state legislature within 14 days[8].

2. Disqualification If a member of Parliament becomes subject to any of the disqualifications specified in the Constitution, his/her seat becomes vacant. Here, the list of disqualifications also include the disqualification on the grounds of defection under the provisions of the Tenth Schedule of the Constitution.

3. Resignation A member may resign his/her seat by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha, as the case may be. The seat falls vacant when the resignation is accepted. However, the Chairman/Speaker may not accept the resignation if he/she is satisfied that it is not voluntary or genuine.

4. Absence A House can declare the seat of a member vacant if he/she is absent from all its meetings for a period of sixty days without its permission. In computing the period of sixty days, no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.

5. Other cases A member has to vacate his/her seat in the Parliament:

(a) if his/her election is declared void by the court;
(b) if he/she is expelled by the House;
(c) if he/she is elected to the office of President or Vice-President; and
(d) if he/she is appointed to the office of governor of a state.

If a disqualified person is elected to the Parliament, the Constitution lays down no procedure to declare the election void. This matter is dealt by the Representation of the People Act (1951), which enables the high court to declare an election void if a disqualified candidate is elected. The aggrieved party can appeal to the Supreme Court against the order of the high court in this regard.

[8]According to the Prohibition of Simultaneous Membership Rules (1950) made by the President.

Oath or Affirmation

Every member of either House of Parliament, before taking his/her seat in the House, has to make and subscribe to an oath or affirmation before the President or some person appointed by him/her for this purpose. In his/her oath or affirmation, a member of Parliament swears:

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India; and
3. to faithfully discharge the duty upon which he/she is about to enter.

Unless a member takes the oath, he/she cannot vote and participate in the proceedings of the House and does not become eligible to parliamentary privileges and immunities.

A person is liable to a penalty of ₹500 for each day he/she sits or votes as a member in a House in the following conditions:

1. Before taking and subscribing to the prescribed oath or affirmation; or
2. When he/she knows that he/she is not qualified or that he/she is disqualified for its membership; or
3. When he/she knows that he/she is prohibited from sitting or voting in the House by virtue of any parliamentary law.

Salaries and Allowances

The members of either House of Parliament are entitled to receive such salaries and allowances as may be determined by Parliament, and there is no provision of pension in the Constitution. However, in 1976, the Parliament has provided pension to the members.

In 1954, the Parliament enacted the Salary, Allowances and Pension of Members of Parliament Act. In 2018, the salary of members was increased from ₹50,000 to ₹1,00,000[9] per month, the constituency allowance from ₹45,000 to ₹70,000 per month and the office expenses allowance from ₹45,000

[9]Vide the Finance Act, 2018. This Act amended the Salary, Allowances and Pension of Members of Parliament Act, 1954.

to ₹60,000 per month. Earlier in 2010, the daily allowance was increased from ₹1,000 to ₹2,000 for each day of residence on duty.

Besides, the members are also provided with travelling facilities, free accommodation, telephone, vehicle advance, medical facilities and so on.

In 2018, the pension of every person who has served for any period as a member of Parliament was increased from ₹20,000 to ₹25,000[9] per month. Further, if a person has served as a member of Parliament for more than five years, he/she is paid an additional pension of ₹2,000 per month (₹1,500 per month before 2018) for every year served in excess of five years.

The salaries and allowances of the Speaker and Deputy Speaker of Lok Sabha and the Chairman and Deputy Chairman of Rajya Sabha are also determined by Parliament. They are charged on the Consolidated Fund of India and thus are not subject to the annual vote of Parliament.

In 1953, the Parliament enacted the Salaries and Allowances of Officers of Parliament Act. Under this Act, "Officer of Parliament" means any of the following officers, namely, the Chairman and Deputy Chairman of the Rajya Sabha and the Speaker and the Deputy Speaker of the Lok Sabha. In 2018, the Parliament increased the salary of the Chairman of the Rajya Sabha from ₹1.25 lakh to ₹4 lakh per month[9a]. Similarly, other Officers of Parliament (i.e., the Speaker and the Deputy Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha) are entitled to receive a salary per month at the same rates as are payable to the Members of Parliament. Further, each Officer of Parliament (other than the Chairman of the Rajya Sabha) is entitled to receive a daily allowance (for each day during the whole of his/her term) at the same rate as is payable to the Members of Parliament. Also, each Officer of Parliament (other than the Chairman of the Rajya Sabha) is entitled to receive a constituency allowance at the same rate as is payable to the Members of Parliament.

According to the same Act, the sumptuary allowance is paid to the Speaker of the Lok Sabha at the same rate as is payable to a Cabinet Minister[9b] (i.e., ₹2,000 per month). Likewise, the sumptuary allowance is paid to the Deputy Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha at the same rate as is payable to a Minister of State (i.e., ₹1000 per month).

PRESIDING OFFICERS OF PARLIAMENT

Each House of Parliament has its own presiding officer. There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha. A panel of chairpersons for the Lok Sabha and a panel of vice-chairpersons for the Rajya Sabha is also appointed.

Speaker of Lok Sabha

Election and Tenure The Speaker is elected by the Lok Sabha from amongst its members (as soon as may be, after its first sitting). Whenever the office of the Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy. The date of election of the Speaker is fixed by the President.

Usually, the Speaker remains in office during the life of the Lok Sabha. However, he/she has to vacate his/her office earlier in any of the following three cases:

1. if he/she ceases to be a member of the Lok Sabha;
2. if he/she resigns by writing to the Deputy Speaker; and
3. if he/she is removed by a resolution passed by a majority of all the then members of the Lok Sabha (i.e., an effective majority). Such a resolution can be moved only after giving 14 days' advance notice.

[9a] Section 3 of the Salaries and Allowances of Officers of Parliament Act, 1953 (as amended).

[9b] Section 5 of the Salaries and Allowances of Officers of Parliament Act, 1953 (as amended).

When a resolution for the removal of the Speaker is under consideration of the House, he/she cannot preside at the sitting of the House, though he/she may be present. However, he/she can speak and take part in the proceedings of the House at such a time and vote in the first instance, though not in the case of an equality of votes.

It should be noted here that, whenever the Lok Sabha is dissolved, the Speaker does not vacate his/her office and continues till the newly-elected Lok Sabha meets.

The tenure of the Speakers of the Lok Sabha (from first to present) is mentioned in Table 23.7.

Role, Powers and Functions The Speaker is the head of the Lok Sabha, and its representative. He/she is the guardian of powers and privileges of the members, the House as a whole and its committees. He/she is the principal spokesperson of the House, and his/her decision is final in all Parliamentary matters. He/she is thus much more than merely the presiding officer of the Lok Sabha. In these capacities, he/she is vested with vast, varied and vital responsibilities and enjoys great honour, high dignity and supreme authority within the House.

The Speaker of the Lok Sabha derives his/her powers and duties from three sources, that is, the Constitution of India, the Rules of Procedure and Conduct of Business of Lok Sabha, and Parliamentary Conventions (residuary powers that are unwritten or unspecified in the Rules). Altogether, he/she has the following powers and duties:

1. He/she maintains order and decorum in the House for conducting its business and regulating its proceedings. This is his/her primary responsibility and he/she has final power in this regard.
2. He/she is the final interpreter of the provisions of (a) the Constitution of India, (b) the Rules of Procedure and Conduct of Business of Lok Sabha, and (c) the parliamentary precedents, within the House.
3. He/she adjourns the House or suspends the meeting in absence of a quorum. The quorum to constitute a meeting of the House is one-tenth of the total strength of the House.
4. He/she does not vote in the first instance. But he/she can exercise a casting vote in the case of a tie. In other words, only when the House is divided equally on any question, the Speaker is entitled to vote. Such vote is called casting vote, and its purpose is to resolve a deadlock.
5. He/she presides over a joint setting of the two Houses of Parliament. Such a sitting is summoned by the President to settle a deadlock between the two Houses on a bill.
6. He/she can allow a 'secret' sitting of the House at the request of the Leader of the House. When the House sits in secret, no stranger can be present in the chamber, lobby or galleries except with the permission of the Speaker.
7. He/she decides whether a bill is a money bill or not and his/her decision on this question is final. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the President for assent, the Speaker endorses on the bill his/her certificate that it is a money bill.
8. He/she decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule. In *Kihoto Hollohan* case[10] (1992), the Supreme Court ruled that the decision of the Speaker in this regard is subject to judicial review.
9. He/she acts as the *ex-officio* chairman of the Indian Parliamentary Group which is a link between the Parliament of India and the various parliaments of the world. He/she also acts as the *ex-officio* chairman of the conference of presiding officers of legislative bodies in the country.
10. He/she appoints the chairman of all the parliamentary committees of the Lok Sabha and supervises their functioning.

[10] *Kihoto Hollohan* vs. *Zachillhu* (1992).

He/she is the chairman of the Business Advisory Committee, the Rules Committee and the General Purposes Committee.

Independence and Impartiality As the office of the Speaker is vested with great prestige, position and authority, independence and impartiality becomes its *sine qua non*[11].

The following provisions ensure the independence and impartiality of the office of the Speaker:

1. He/she is provided with a security of tenure. He/she can be removed only by a resolution passed by the Lok Sabha by an effective majority (ie, a majority of all the then members of the House) and not by a simple majority (ie, a majority of the members present and voting in the House). This motion of removal can be considered and discussed only when it has the support of at least 50 members.
2. His/her salaries and allowances are fixed by Parliament. They are charged on the Consolidated Fund of India and thus are not subject to the annual vote of Parliament.
3. His/her work and conduct cannot be discussed and criticised in the Lok Sabha except on a substantive motion.
4. His/her powers of regulating procedure or conducting business or maintaining order in the House are not subject to the jurisdiction of any Court.
5. He/she cannot vote in the first instance. He/she can only exercise a casting vote in the event of a tie. This makes the position of Speaker impartial.
6. He/she is given a very high position in the order of precedence. He/she is placed at seventh rank, along with the Chief Justice of India. This means, he/she has a higher rank than all cabinet ministers, except the Prime Minister or Deputy Prime Minister.

In Britain, the Speaker is strictly a non-party man. There is a convention that the Speaker has to resign from his/her party and remain politically neutral. This healthy convention is not fully established in India where the Speaker does not resign from the membership of his/her party on his/her election to the exalted office.

Deputy Speaker of Lok Sabha

Like the Speaker, the Deputy Speaker is also elected by the Lok Sabha itself from amongst its members. He/she is elected after the election of the Speaker has taken place. The date of election of the Deputy Speaker is fixed by the Speaker. Whenever the office of the Deputy Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy.

Like the Speaker, the Deputy Speaker remains in office usually during the life of the Lok Sabha. However, he/she may vacate his/her office earlier in any of the following three cases:

1. if he/she ceases to be a member of the Lok Sabha;
2. if he/she resigns by writing to the Speaker; and
3. if he/she is removed by a resolution passed by a majority of all the then members of the Lok Sabha(i.e., an effective majority). Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He/she also acts as the Speaker when the latter is absent from the sitting of the House. In both the cases, he/she assumes all the powers of the Speaker. He/she also presides over the joint

[11] In this context, V.V. Giri observed: "The holder of an office provided with such extensive authority and power must discharge the duties of his/her office impartially. So impartiality is regarded as an indispensable condition of the office of the Speaker, who is the guardian of the powers and privileges of the House and not of the political party with whose support he/she might have been elected to the office. It is not possible for him/her to maintain order in the House unless he/she enjoys the confidence of the minority parties by safeguarding their rights and privileges". ('Powers of the Presiding Officers in Indian Legislature' in *Journal of Consitutional and Parliamentary Studies*, New Delhi, Vol II, No. 4, Oct-Dec. 1968, p. 22)

sitting of both the Houses of Parliament, in case the Speaker is absent from such a sitting.

It should be noted here that the Deputy Speaker is not subordinate to the Speaker. He/she is directly responsible to the House.

The Deputy Speaker has one special privilege, that is, whenever he/she is appointed as a member of a parliamentary committee, he/she automatically becomes its chairman.

Like the Speaker, the Deputy Speaker, while presiding over the House, cannot vote in the first instance; he/she can only exercise a casting vote in the case of a tie. Further, when a resolution for the removal of the Deputy Speaker is under consideration of the House, he/she cannot preside at the sitting of the House, though he/she may be present.

When the Speaker presides over the House, the Deputy Speaker is like any other ordinary member of the House. He/she can speak in the House, participate in its proceedings and vote on any question before the House.

The Deputy Speaker is entitled to a regular salary and allowance fixed by Parliament, and charged on the Consolidated Fund of India.

Usually, the speaker comes from the ruling party (or ruling alliance), while the post of Deputy Speaker goes to the opposition party (or opposition alliance). However, there have been certain exceptional cases in this regard.

The Speaker and the Deputy Speaker, while assuming their offices, do not make and subscribe any separate oath or affirmation.

The institutions of Speaker and Deputy Speaker originated in India in 1921 under the provisions of the Government of India Act of 1919 (Montague–Chelmsford Reforms). At that time, the Speaker and the Deputy Speaker were called the President and Deputy President respectively and the same nomenclature continued till 1947. Before 1921, the Governor-General of India used to preside over the meetings of the Central Legislative Council. In 1921, the Frederick Whyte and Sachidanand Sinha were appointed by the Governor-General of India as the first Speaker and the first Deputy Speaker (respectively) of the central legislative assembly. In 1925, Vithalbhai J. Patel became the first Indian and the first elected Speaker of the central legislative assembly. The Government of India Act of 1935 changed the nomenclatures of President and Deputy President of the Central Legislative Assembly to the Speaker and Deputy Speaker respectively. However, the old nomenclature continued till 1947 as the federal part of the 1935 Act was not implemented. G.V. Mavalankar and Ananthasayanam Ayyangar had the distinction of being the first Speaker and the first Deputy Speaker (respectively) of the Lok Sabha. G.V. Mavalankar also held the post of Speaker in the Constituent Assembly (Legislative) as well as the provisional Parliament. He/she held the post of Speaker of Lok Sabha continuously for one decade from 1946 to 1956.

Panel of Chairpersons of Lok Sabha

Under the Rules of Lok Sabha, the Speaker nominates from amongst the members a panel of not more than ten chairpersons. Any of them can preside over the House in the absence of the Speaker or the Deputy Speaker. He/she has the same power as the Speaker when so presiding. He/she holds office until a new panel of chairpersons is nominated. When a member of the panel of chairpersons is also not present, any other person as determined by House acts as the Speaker.

It must be emphasised here that a member of the panel of chairpersons cannot preside over the House, when the office of the Speaker or the Deputy Speaker is vacant. During such time, the Speaker's duties are to be performed by such member of the House as the President may appoint for the purpose. The elections are held, as soon as possible, to fill the vacant posts.

Speaker *Pro Tem*

As provided by the Constitution, the Speaker of the last Lok Sabha vacates his/her office immediately before the first meeting of the newly-elected Lok Sabha. Therefore, the President appoints a member of the Lok Sabha as the Speaker *Pro Tem*. Usually, the seniormost

member is selected for this. The President administers oath to the Speaker *Pro Tem*.

The Speaker *Pro Tem* has all the powers of the Speaker. He/she presides over the first sitting of the newly-elected Lok Sabha. His/her main duty is to administer oath to the new members. He/she also enables the House to elect the new Speaker.

When the new Speaker is elected by the House, the office of the Speaker *Pro Tem* ceases to exist. Hence, this office is a temporary office, existing for a few days[12].

Chairman of Rajya Sabha

The presiding officer of the Rajya Sabha is known as the Chairman. The Vice-President of India is the *ex-officio* Chairman of the Rajya Sabha. During any period when the Vice-President acts as President or discharges the functions of the President, he/she does not perform the duties of the office of the Chairman of Rajya Sabha.

The Chairman of the Rajya Sabha can be removed from his/her office only if he/she is removed from the office of the Vice-President. As a presiding officer, the powers and functions of the Chairman in the Rajya Sabha are similar to those of the Speaker in the Lok Sabha. However, the Speaker has two special powers which are not enjoyed by the Chairman:

1. The Speaker decides whether a bill is a money bill or not and his/her decision on this question is final.
2. The Speaker presides over a joint sitting of two Houses of Parliament.

Unlike the Speaker (who is a member of the House), the Chairman is not a member of the House. But like the Speaker, the Chairman also cannot vote in the first instance. He/she too can cast a vote in the case of an equality of votes.

The Vice-President cannot preside over a sitting of the Rajya Sabha as its Chairman when a resolution for his/her removal is under consideration. However, he/she can be present and speak in the House and can take part in its proceedings, without voting, even at such a time (while the Speaker can vote in the first instance when a resolution for his/her removal is under consideration of the Lok Sabha).

As in case of the Speaker, the salaries and allowances of the Chairman are also fixed by the Parliament. They are charged on the Consolidated Fund of India and thus are not subject to the annual vote of Parliament.

During any period when the Vice-President acts as President or discharges the functions of the President, he/she is not entitled to any salary or allowance payable to the Chairman of the Rajya Sabha. But he/she is paid the salary and allowance of the President during such a time.

Deputy Chairman of Rajya Sabha

The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members. Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy.

The Deputy Chairman vacates his/her office in any of the following three cases:

1. if he/she ceases to be a member of the Rajya Sabha;
2. if he/she resigns by writing to the Chairman; and
3. if he/she is removed by a resolution passed by a majority of all the then members of the Rajya Sabha (i.e., an effective majority). Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant or when the Vice-President acts as President or discharges the functions of the President. He/she also acts as the Chairman when the latter is absent from the sitting of the House. In both the cases, he/she has all the powers of the Chairman.

It should be emphasised here that the Deputy Chairman is not subordinate to the Chairman. He/she is directly responsible to the Rajya Sabha.

[12]For example, in the 13th Lok Sabha, Mr. Indrajit Gupta was appointed as Speaker *Pro Tem* on 20 October 1999 and remained in that office till 22 October 1999 when the new Speaker, Mr. G.M.C. Balayogi was elected.

Like the Chairman, the Deputy Chairman, while presiding over the House, cannot vote in the first instance; he/she can only exercise a casting vote in the case of a tie. Further, when a resolution for the removal of the Deputy Chairman is under consideration of the House, he/she cannot preside over a sitting of the House, though he/she may be present.

When the Chairman presides over the House, the Deputy Chairman is like any other ordinary member of the House. He/she can speak in the House, participate in its proceedings and vote on any question before the House.

Like the Chairman, the Deputy Chairman is also entitled to a regular salary and allowance. They are fixed by Parliament and are charged on the Consolidated Fund of India.

Panel of Vice-Chairpersons of Rajya Sabha

Under the Rules of Rajya Sabha, the Chairman nominates from amongst the members a panel of vice-chairpersons. Any one of them can preside over the House in the absence of the Chairman or the Deputy Chairman. He/she has the same powers as the Chairman when so presiding. He/she holds office until a new panel of vice-chairpersons is nominated.

When a member of the panel of vice-chairpersons is also not present, any other person as determined by the House acts as the Chairman.

It must be emphasised here that a member of the panel of vice-chairpersons cannot preside over the House, when the office of the Chairman or the Deputy Chairman is vacant. During such time, the Chairman's duties are to be performed by such member of the House as the President may appoint for the purpose. The elections are held, as soon as possible, to fill the vacant posts.

Secretariat of Parliament

Each House of Parliament has separate secretarial staff of its own, though there can be some posts common to both the Houses. Their recruitment and service conditions are regulated by Parliament. The secretariat of each House is headed by a secretary-general. He/she is a permanent officer and is appointed by the presiding officer of the House.

LEADERS IN PARLIAMENT

Leader of the House

Under the Rules of Lok Sabha, the 'Leader of the House' means the prime minister, if he/she is a member of the Lok Sabha, or a minister who is a member of the Lok Sabha and is nominated by the prime minister to function as the Leader of the House. There is also a 'Leader of the House' in the Rajya Sabha. He/she is a minister and a member of the Rajya Sabha and is nominated by the prime minister to function as such. The leader of the house in either House is an important functionary and exercises direct influence on the conduct of business. He/she can also nominate a deputy leader of the House. The same functionary in USA is known as the 'majority leader'.

Leader of the Opposition

In each House of Parliament, there is the 'Leader of the Opposition'. In a parliamentary system of government, the leader of the opposition has a significant role to play. His/her main functions are to provide a constructive criticism of the policies of the government and to provide an alternative government. Therefore, the leaders of Opposition in the Lok Sabha and the Rajya Sabha were accorded statutory recognition in 1977 under the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977. They are also entitled to the salary, allowances and other facilities equivalent to that of a cabinet minister. It was in 1969 that an official leader of the opposition was recognised for the first time. The same functionary in USA is known as the 'minority leader'.

Under the above Act, the 'Leader of the Opposition' means that member of the Rajya Sabha or the Lok Sabha who is, for the time being, the Leader in that House of the party in opposition to the government having the greatest numerical strength and recognised

as such by the Chairman or the Speaker. Further, where there are two or more parties in opposition to the government having the same numerical strength, the Chairman or the Speaker shall (having regard to the status of the parties) recognise any one of the Leaders of such parties as the Leader of the Opposition and such recognition shall be final and conclusive. According to the directions issued by both the Chairman and the Speaker, the minimum numerical strength required for recognition as a political party is one-tenth of the total membership of that House.

The British political system has an unique institution called the 'Shadow Cabinet'. It is formed by the Opposition party to balance the ruling cabinet and to prepare its members for future ministerial offices. In this shadow cabinet, almost every member in the ruling cabinet is 'shadowed' by a corresponding member in the opposition cabinet. This shadow cabinet serves as the 'alternate cabinet' if there is change of government. That is why Ivor Jennings described the leader of Opposition as the 'alternative Prime Minister'. He/she enjoys the status of a minister and is paid by the government.

Though the offices of the leader of the House and the leader of the Opposition are not mentioned in the Constitution of India, they are mentioned in the Rules of the House and Parliamentary Statute respectively.

Whips

The office of 'whip' is mentioned neither in the Constitution of India nor in the Rules of the House. It is based on the conventions of the parliamentary government.

Every political party, whether ruling or opposition has its own Chief whip and whips in the Parliament. The whip is appointed by the political party to serve as an assistant floor leader. He/she is charged with the responsibility of ensuring the attendance of his/her party members in large numbers and securing their support in favour of or against a particular issue. He/she regulates and monitors their behaviour in the Parliament. The members are supposed to follow the directives given by the whip. Otherwise, disciplinary action can be taken.

The Chief whip of the government party in the Lok Sabha is the Minister of Parliamentary Affairs. In the Rajya Sabha, the Minister of State for Parliamentary Affairs holds this position. The Chief whip is directly responsible to the leader of the House. It is part of his/her duties to advise the government on parliamentary business and to maintain a close liaison with the ministers in regard to parliamentary business affecting their departments[12a].

The Chief whip of a recognised party and a recognised group is entitled to telephone and secretarial facilities under the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998.

Under the above Act, a recognised party means every party which has a strength of not less than fifty-five members in respect of the Lok Sabha and twenty-five members in respect of the Rajya Sabha. Similarly, a recognised group means every party which has a strength of not less than thirty members in respect of the Lok Sabha and fifteen members in respect of the Rajya Sabha.

SESSIONS OF PARLIAMENT

Summoning

The President from time to time summons each House of Parliament to meet at such time and place as he/she thinks fit. But, the maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year. There are usually three sessions in a year, viz,

1. The Budget Session (February to May);
2. The Monsoon Session (July to September); and
3. The Winter Session (November to December).

[12a] M.N. Kaul and S.L. Shakdher, Practice and Procedure of Parliament, Sixth Edition, 2009, Lok Sabha Secretariat, pp. 151–52.

A 'session' of Parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in the case of the Lok Sabha). During a session, the House meets everyday to transact business. The period spanning between the prorogation of a House and its reassembly in a new session is called 'recess'.

Adjournment

A session of Parliament consists of many meetings. Each meeting of a day consists of two sittings, that is, a morning sitting from 11 am to 1 pm and post-lunch sitting from 2 pm to 6 pm. A sitting of Parliament can be terminated by adjournment or adjournment *sine die* or prorogation or dissolution (in the case of the Lok Sabha). An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.

Adjournment *Sine Die*

Adjournment *sine die* means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment *sine die*. The power of adjournment as well as adjournment *sine die* lies with the presiding officer of the House. He/she can also call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned *sine die*.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned *sine die*, when the business of a session is completed. Within the next few days, the President issues a notification for prorogation of the session. However, the President can also prorogue the House while in session.

The specific differences between adjournment and prorogation are summarised in Table 23.1.

Dissolution

Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is

Table 23.1 Adjournment vs Prorogation

	Adjournment		Prorogation
1.	It only terminates a sitting and not a session of the House.	1.	It not only terminates a sitting but also a session of the House.
2.	It is done by presiding officer of the House.	2.	It is done by the President of India.
3.	It does not affect the bills or any other business pending before the House and the same can be resumed when the House meets again.	3.	It also does not affect the bills or any other business pending before the House.[13] However, all pending notices (other than those for introducing bills) lapse on prorogation and fresh notices have to be given for the next session[13a]. In Britain, prorogation brings to an end all bills or any other business pending before the House.

[13]Under Article 107 (3) of the Constitution, a bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

Under Rule 336 of the Lok Sabha, a motion, resolution or an amendment, which has been moved and is pending in the House, shall not lapse by reason only of the prorogation of the House.

[13a]Under Rule 335 of the Lok Sabha, on the prorogation of the House, all pending notices, other than notices of intention to move for leave to introduce a Bill, shall lapse and fresh notices shall be given for the next session.

subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after general elections are held. The dissolution of the Lok Sabha may take place in either of two ways:

1. Automatic dissolution, that is, on the expiry of its tenure of five years or the terms as extended during a national emergency; or
2. Whenever the President decides to dissolve the House, which he/she is authorised to do. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.

When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse. They (to be pursued further) must be reintroduced in the newly-constituted Lok Sabha. However, some pending bills and all pending assurances that are to be examined by the Committee on Government Assurances do not lapse on the dissolution of the Lok Sabha. The position with respect to lapsing of bills is as follows:

1. A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha).
2. A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses.
3. A bill not passed by the two Houses due to disagreement and if the President has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse.
4. A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse.
5. A bill passed by both Houses but pending assent of the President does not lapse.
6. A bill passed by both Houses but returned by the President for reconsideration of Houses does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is one-tenth of the total number of members in each House including the presiding officer. It means that there must be at least 55 members present in the Lok Sabha and 25 members present in the Rajya Sabha, if any business is to be conducted. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House

All matters at any sitting of either House or joint sitting of both the Houses are decided by a majority of votes of the members present and voting, excluding the presiding officer. Only a few matters, which are specifically mentioned in the Constitution, require either effective majority or special majority, not simple majority.

The presiding officer of a House does not vote in the first instance, but exercises a casting vote in the case of an equality of votes. The proceedings of a House are to be valid irrespective of any unauthorised voting or participation or any vacancy in its membership.

The following points can be noted with respect to the voting procedure in the Lok Sabha:

1. On the conclusion of a debate, the Speaker shall put the question and invite those who are in favour of the motion to say 'Aye' and those against the motion to say 'No'.
2. The Speaker shall then say: 'I think the Ayes (or the Noes, as the case may be) have it.' If the opinion of the Speaker as to the decision of a question is not challenged, he/she shall say twice: The Ayes (or the Noes, as the case may be) have it' and the question before the House shall be determined accordingly.
3. (a) If the opinion of the Speaker as to the decision of a question is challenged, he/she shall order that the Lobby be cleared.
   (b) After the lapse of three minutes and thirty seconds, he/she shall put the question a second time and declare whether in his/her opinion the 'Ayes' or the 'Noes' have it.

(c) If the opinion so declared is again challenged, he/she shall direct that the votes be recorded either by operating the automatic vote recorder or by using 'Aye' and 'No' Slips in the House or by the Members going into the Lobbies.

4. If in the opinion of the Speaker, the Division is unnecessarily claimed, he/she may ask the members who are for 'Aye' and those for 'No' respectively to rise in their places and, on a count being taken, he/she may declare the determination of the House. In such a case, the names of the voters shall not be recorded.

Methods of Voting

The various methods adopted for voting in the Lok Sabha are explained below[13b]:

1. ***Voice Vote:*** It is a simple method for deciding a question put by the Speaker on a motion made by a member. Under this method, the question before the House is determined by the 'Ayes' or the 'Noes', as the case may be.
2. ***Division:*** There are three methods of holding a Division. These are:
   (a) By operating the Automatic Vote Recording Equipment;
   (b) By distributing 'Ayes' and 'Noes' slips in the House; and
   (c) By members going into the Lobbies.

   However, the method of recording of votes in the Lobbies has become obsolete ever since the installation of the Automatic Vote Recording Equipment.
3. ***Secret Ballot:*** During an 'open' voting period, the individual results are shown by the three colours: green for 'Ayes', red for 'Noes' and yellow for 'Abstain' on the Individual Result Display Panel. The secret voting, if any, is held on similar lines except that the Light Emitting Diode (LED) on the Individual Result Display Panel flashes only white light to show that the vote has been recorded.
4. ***Recording of Votes by Distribution of Slips:*** The method of recording of votes by members on 'Ayes' and 'Noes' slips is generally resorted to in the eventuality of:
   (a) Sudden failure of the working of the Automatic Vote Recording Equipment; and
   (b) At the commencement of the new Lok Sabha, before the seats/division numbers have been allotted to the members.
5. ***Physical Count of Members in their Places Instead of a Formal Division:*** If in the opinion of the Speaker, a Division is unnecessarily claimed, he/she may ask the members who are for 'Ayes' and those for 'Noes', respectively, to rise in their places and on a count being takes, he/she may declare the determination of the House. In such a case, the particulars of voting of the members are not recorded.
6. ***Casting Vote:*** If in a Division, the number of 'Ayes' and 'Noes' is equal, the question is decided by the casting vote of the Speaker. Under the provisions of the Constitution, the Speaker (or the person acting as such) cannot vote in a Division; he/she has only a casting vote which he/she must exercise in the case of equality of votes.

Language in Parliament

The Constitution has declared Hindi and English to be the languages for transacting business in the Parliament. However, the presiding officer can permit a member to address the House in his/her mother-tongue. In both the Houses, facilities are available for simultaneous interpretation of speeches made in any of the languages specified in the Eighth Schedule of the Constitution into Hindi and English. However, if a member addresses the House in a language for which simultaneous interpretaton facility is not available, he/she

[13b] This information is adopted from the official website of the Lok Sabha (Digital Sansad).

has to provide a translation copy of his/her speech in Hindi or English.

Though English was to be discontinued as a floor language after the expiration of fifteen years from the commencement of the Constitution (that is, in 1965), the Official Languages Act (1963) allowed English to be continued along with Hindi.

Rights of Ministers and Attorney General

In addition to the members of a House, every minister and the attorney general of India have the right to speak and take part in the proceedings of either House, any joint sitting of both the Houses and any committee of Parliament of which he/she is a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

1. A minister can participate in the proceedings of a House, of which he/she is not a member. In other words, a minister belonging to the Lok Sabha can participate in the proceedings of the Rajya Sabha and vice-versa.
2. A minister, who is not a member of either House, can participate in the proceedings of both the Houses. It should be noted here that a person can remain a minister for six months, without being a member of either House of Parliament.

Lame-duck Session

It refers to the last session of the preceding Lok Sabha, after a new Lok Sabha has been elected. Those members of the preceding Lok Sabha who could not get re-elected to the new Lok Sabha are called lame-ducks.

During the years 1957 and 1962 when general elections to Lok Sabha were held, in addition to three sessions of the new Lok Sabha, one session each of the preceding Lok Sabha was also held after elections to new Lok Sabha had taken place and results thereof had been announced, but before the new Lok Sabha was duly constituted. These were popularly known as "lame-duck sessions". The purpose of these sessions was to pass the Vote on Account to enable the government to carry on till the new Lok Sabha was constituted. However, there was no lame-duck session of the Third Lok Sabha as the Fourth Lok Sabha was constituted soon after the result of the Fourth General Elections had been announced. The Vote on Account was passed in the first session of the new Lok Sabha[13c].

TYPES OF MAJORITY

The following four types of majority are required to determine the various matters in the Parliament:

1. Simple Majority

It is a majority of the members present and voting in the House. It is also known as ordinary majority or functional majority or working majority. Article 100 of the Constitution states that except as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting. This means that the simple majority is the general rule prescribed by the Constitution for the determination of questions in the Parliament. This type of majority is required in the following cases:

(a) Passing of the ordinary bills, money bills and financial bills.
(b) Passing of the Adjournment Motion, No-Confidence Motion, Confidence Motion, Censure Motion and Motion of Thanks.
(c) Removal of the Vice-President in the Lok Sabha (Article 67).
(d) Approval of the imposition of the President's Rule (Article 356).
(e) Approval of the proclamation of financial emergency (Article 360).
(f) Election of the Speaker and the Deputy Speaker of the Lok Sabha (Article 93).

[13c]M.N. Kaul and S.L. Shakdher, Practice and Procedure of Parliament, Sixth Edition, 2009, Lok Sabha Secretariat, pp. 454–55.

(g) Election of the Deputy Chairman of the Rajya Sabha (Article 89).
(h) Passing of a resolution by the Lok Sabha for disapproving the continuance of the national emergency (Article 352).

2. Effective Majority

It means a majority of the total membership of the House excluding the vacant seats. In other words, it is a majority of the effective strength of the House. For example, the effective majority in the case of Rajya Sabha is 111, if there are 25 vacant seats (out of the total 245 members). Similarly, the effective majority in the case of Lok Sabha is 265 if there are 15 vacant seats (out of the total 543 members). This type of majority is referred in the Constitution as "a majority of all the then members of the House". It is required in the following cases:

(a) Removal of the Vice-President in the Rajya Sabha (Article 67)
(b) Removal of the Deputy Chairman of the Rajya Sabha (Article 90)
(c) Removal of the Speaker and the Deputy Speaker of the Lok Sabha (Article 94)

3. Absolute Majority

It means a majority of the total membership of the House, irrespective of the fact whether there are vacant seats or absentees. For example, the absolute majority in the case of Rajya Sabha is 123 (out of the total 245 members). Similarly, the absolute majority in the case of Lok Sabha is 272 (out of the total 543 members). This type of majority is not prescribed by the Constitution for any case (or purpose) as a standalone (single) requirement. But, it is required in certain cases as a component of special majority (i.e., special majority-I which is explained below).

4. Special Majority

The various cases of requirement of special majority can be further classified in the following way:

Special Majority-I A majority of the total membership of each House and a two-thirds majority of the members present and voting is required in the following cases:

(a) Amendment of the Constitution (Article 368)
(b) Removal of the Judges of the Supreme Court (Article 124)
(c) Removal of the Judges of the High Courts (Article 217)
(d) Removal of the Comptroller and Auditor General of India (Article 148)
(e) Removal of the Chief Election Commissioner (Article 324)
(f) Removal of the State Election Commissioner (Article 243K)
(g) Parliamentary approval of proclamation of national emergency (Article 352)

Special Majority-II A two-thirds majority of the total membership of each House is required for the impeachment of the President (Article 61).

Special Majority-III A two-thirds majority of the members present and voting (in the Rajya Sabha) is required in the following cases:

(a) Recommendation for the creation of new All-India Services (Article 312)
(b) Parliamentary legislation on matters in the State List (Article 249)

DEVICES OF PARLIAMENTARY PROCEEDINGS

Question Hour

The first hour of every parliamentary sitting is slotted for this. During this time, the members ask questions and the ministers usually give answers. The questions are of three kinds, namely, starred, unstarred and short notice.

A **starred question** (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow.

An **unstarred question**, on the other hand, requires a written answer and hence, supplementary questions cannot follow.

A **short notice question** is one that is asked by giving a notice of less than ten days. It is answered orally.

In addition to the ministers, the questions can also be asked to the private members. Thus, a question may be addressed to a private member if the subject matter of the question relates to some Bill, resolution or other matter connected with the business of the House for which that member is responsible. The procedure in regard to such question is the same as that followed in the case of questions addressed to a minister.

The list of starred, unstarred, short notice questions and questions to private members are printed in green, white, light pink and yellow colour, respectively, to distinguish them from one another.

Zero Hour

Unlike the question hour, the zero hour is not mentioned in the Rules of Procedure. Thus it is an informal device available to the members to raise various matters of urgent public importance. The zero hour starts immediately after the question hour and lasts until the agenda for the day (ie, regular business of the House) is taken up. In other words, the time gap between the question hour and the agenda is known as zero hour. It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.

Motions

No discussion on a matter of general public importance can take place except on a motion made with the consent of the presiding officer. The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by either ministers or private members.

The motions moved by the members to raise discussions on various matters fall into three principal categories:

1. ***Substantive Motion:*** It is a self-contained independent proposal dealing with a very important matter like impeachment of the President or removal of Chief Election Commissioner.
2. ***Substitute Motion:*** It is a motion that is moved in substitution of an original motion and proposes an alternative to it. If adopted by the House, it supersedes the original motion.
3. ***Subsidiary Motion:*** It is a motion that, by itself, has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House. It is divided into three sub-categories:
   (a) *Ancillary Motion:* It is used as the regular way of proceeding with various kinds of business.
   (b) *Superseding Motion:* It is moved in the course of debate on another issue and seeks to supersede that issue.
   (c) *Amendment:* It seeks to modify or substitute only a part of the original motion.

Closure Motion It is a motion moved by a member to cut short the debate on a matter before the House. If the motion is approved by the House, debate is stopped forthwith and the matter is put to vote. There are four kinds of closure motions[14]:

(a) *Simple Closure:* It is one when a member moves that the 'matter having been sufficiently discussed be now put to vote'.
(b) *Closure by Compartments:* In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote.
(c) *Kangaroo Closure:* Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed.
(d) *Guillotine Closure:* It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the

[14] J.C. Johari: *Indian Government and Politics*, Vishal, Volume II, Thirteenth Edition, 2001, p. 360.

discussed ones due to want of time (as the time allotted for the discussion is over).

Privilege Motion It is concerned with the breach of parliamentary privileges by a minister. It is moved by a member when he/she feels that a minister has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Its purpose is to censure the concerned minister.

Calling Attention Motion It is introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public importance, and to seek an authoritative statement from him/her on that matter. Like the zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the zero hour, it is mentioned in the Rules of Procedure.

Adjournment Motion It is introduced in the Parliament to draw attention of the House to a definite matter of urgent public importance, and needs the support of 50 members to be admitted. As it interrupts the normal business of the House, it is regarded as an extraordinary device. It involves an element of censure against the government and hence Rajya Sabha is not permitted to make use of this device. The discussion on an adjournment motion should last for not less than two hours and thirty minutes.

The right to move a motion for an adjournment of the business of the House is subject to the following restrictions:

1. It should raise a matter which is definite, factual, urgent and of public importance;
2. It should not cover more than one matter;
3. It should be restricted to a specific matter of recent occurrence and should not be framed in general terms;
4. It should not raise a question of privilege;
5. It should not revive discussion on a matter that has been discussed in the same session;
6. It should not deal with any matter that is under adjudication by court; and
7. It should not raise any question that can be raised on a distinct motion.

No-Confidence Motion Article 75 of the Constitution says that the council of ministers shall be collectively responsible to the Lok Sabha. It means that the ministry stays in office so long as it enjoys confidence of the majority of the members of the Lok Sabha. In other words, the Lok Sabha can remove the ministry from office by passing a no-confidence motion. The motion needs the support of 50 members to be admitted.

Confidence Motion The motion of confidence has come up as a new procedural device to cope with the emerging situations of fractured mandates resulting in hung parliament, minority governments and coalition governments. The governments formed with wafer-thin majority have been called upon by the President to prove their majority on the floor of the House. The government of the day, sometimes, on its own, seeks to prove its majority by moving a motion of confidence and winning the confidence of the House. If the confidence motion is negatived, it results in the fall of the government[15].

Censure Motion A censure motion is different from a no-confidence motion as shown in Table 23.2.

Motion of Thanks The first session after each general election and the first session of every fiscal year is addressed by the President. In this address, the President outlines the policies and programmes of the government in the preceding year and ensuing year. This address of the President, which corresponds to the 'speech from the Throne in Britain', is discussed in both the Houses of Parliament on a motion called the 'Motion of Thanks'. At the end of the discussion, the motion is put to vote. This

[15]T.K. Viswanathan (Editor), *The Indian Parliament*, Lok Sabha Secretariat, Fourteenth Edition, 2011, p. 21.

Table 23.2 Censure Motion vs No Confidence Motion

Censure Motion	No-Confidence Motion
1. It should state the reasons for its adoption in the Lok Sabha.	1. It need not state the reasons for its adoption in the Lok Sabha.
2. It can be moved against an individual minister or a group of ministers or the entire council of ministers.	2. It can be moved against the entire council of ministers only.
3. It is moved for censuring the council of ministers for specific policies and actions.	3. It is moved for ascertaining the confidence of Lok Sabha in the council of ministers.
4. If it is passed in the Lok Sabha, the council of ministers need not resign from the office.	4. If it is passed in the Lok Sabha, the council of ministers must resign from office.

motion must be passed in the House. Otherwise, it amounts to the defeat of the government. This inaugural speech of the President is an occasion available to the members of Parliament to raise discussions and debates to examine and criticise the government and administration for its lapses and failures.

No-Day-Yet-Named Motion It is a motion that has been admitted by the Speaker but no date has been fixed for its discussion. The Speaker, after considering the state of business in the House and in consultation with the leader of the House or on the recommendation of the Business Advisory Committee, allots a day or days or part of a day for the discussion of such a motion.

Dilatory Motion It is a motion for the adjournment of the debate on a bill/motion/resolution etc. or a motion to retard or delay the progress of a business under consideration of the House. It can be moved by a member at any time after a motion has been made. The debate on a dilatory motion must be restricted to the matter contained in such motion. If the Speaker is of the opinion that such a motion is an abuse of the rules of the House, he/she may either forthwith put the question thereon or decline to propose the question.

Point of Order

A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. A point of order should relate to the interpretation or enforcement of the Rules of the House or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker. It is usually raised by an opposition member in order to control the government. It is an extraordinary device as it suspends the proceedings before the House. No debate is allowed on a point of order.

Half-an-Hour Discussion

It is meant for discussing a matter of sufficient public importance, which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact. The Speaker can allot three days in a week for such discussions. There is no formal motion or voting before the House.

Short Duration Discussion

It is also known as two-hour discussion as the time allotted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance. The Speaker can allot two days in a week for such discussions. There is neither a formal motion before the house nor voting. This device has been in existence since 1953.

Special Mention

A matter which is not a point of order or which cannot be raised during question hour, half-an hour discussion, short duration discussion or under adjournment motion, calling attention notice or under any rule of the House can be raised under the special mention in the Rajya Sabha. Its equivalent procedural device in the Lok Sabha is known as 'Notice (Mention) Under Rule 377'.

Resolutions

A resolution is a self-contained independent proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision of the House. All resolutions are substantive motions.

The members can move resolutions to draw the attention of the House or the government to matters of general public interest. The discussion on a resolution is strictly relevant to and within the scope of the resolution. A member who has moved a resolution or amendment to a resolution cannot withdraw the same except by leave of the House.

A resolution may have the following objectives:

(i) A declaration of opinion or a recommendation.
(ii) To record either approval or disapproval by the House of an act or policy of the government.
(iii) Convey a message or commend, urge or request an action.
(iv) Call attention to a matter or situation for consideration by the government.

Resolutions are classified into three categories:[16]

1. ***Private Member's Resolution:*** It is one that is moved by a private member (other than a minister). It is discussed only on alternate Fridays and in the afternoon sitting.
2. ***Government Resolution:*** It is one that is moved by a minister. It is of the following three kinds:
   (a) Resolutions approving international treaties, conventions or agreements of which the government is a party.
   (b) Resolutions declaring or approving certain policies of the government.
   (c) Resolutions approving recommendations of certain committees.
3. ***Statutory Resolution:*** It can be moved either by a private member or a minister. It is so called because it is in pursuance of a provision in the Constitution or an Act of Parliament.

Resolutions are different from motions in the following respects:

> "All resolutions come in the category of substantive motions, that is to say, every resolution is a particular type of motion. All motions need not necessarily be substantive. Further, all motions are not necessarily put to vote of the House, whereas all the resolutions are required to be voted upon."[17]

Youth Parliament

The scheme of Youth Parliament was started on the recommendation of the Fourth All India Whips Conference. Its objectives are:

1. to acquaint the younger generations with practices and procedures of Parliament;
2. to imbibe the spirit of discipline and tolerance cultivating character in the minds of youth; and
3. to inculcate in the student community the basic values of democracy and to enable them to acquire a proper perspective on the functioning of democratic institutions.

The ministry of parliamentary affairs provides necessary training and encouragement to the states in introducing the scheme.

[16]Dictionary of Constitutional and Parliamentary Terms, Lok Sabha Secretariat, Second Edition, 2005, pp. 396–97.

[17]Subhash C. Kashyap: *Our Parliament*, National Book Trust, 1999 Edition, p. 139.

LEGISLATIVE PROCEDURE IN PARLIAMENT

The legislative procedure is identical in both the Houses of Parliament. Every bill has to pass through the same stages in each House. A bill is a proposal for legislation and it becomes an act or law when duly enacted.

The bills introduced in the Parliament are of two kinds: public bills and private bills (also known as government bills and private members' bills respectively). Though both are governed by the same general procedure and pass through the same stages in the House, they differ in various respects as shown in Table 23.3.

Depending on their content, the bills may further be classified into[18]:

(a) Original bills (bills embodying new proposals, ideas or policies);
(b) Amending bills (bills which seek to modify, amend or revise the existing Acts);
(c) Consolidating bills (bills which seek to consolidate existing laws on a particular subject);
(d) Expiring Laws (Continuance) bills (bills to continue an expiring Act);
(e) Repealing bills (bills seeking to repeal existing Acts);
(f) Validating bills (bills which seek to give validity to certain actions);
(g) Bills to replace Ordinances;
(h) Constitution (Amendment) bills; and
(i) Money and Financial bills.

On the basis of procedure required for their passage in the Parliament, the bills can also be broadly classified into the following four types:

1. Ordinary bills, which are concerned with any matter other than financial subjects.
2. Money bills, which are concerned with the financial matters like taxation, public expenditure, etc.
3. Financial bills, which are also concerned with financial matters (but are different from money bills).
4. Constitution amendment bills, which are concerned with the amendment of the provisions of the Constitution.

The Constitution has laid down separate procedures for the enactment of all the four types of bills. The procedures with regard to ordinary bills, money bills and financial bills are explained here. The procedure with regard to Constitution amendment bills is already explained in detail.

Table 23.3 Public Bill vs Private Bill

Public Bill	Private Bill
1. It is introduced in the Parliament by a minister.	1. It is introduced by any member of Parliament other than a minister.
2. It reflects of the policies of the government.	2. It does not reflect the stand of government on public matter.
3. It has greater chance to be approved by the Parliament.	3. It has lesser chance to be approved by the Parliament.
4. Its rejection by the House amounts to the expression of want of parliamentary confidence in the government and may lead to its resignation.	4. Its rejection by the House has no implication on the parliamentary confidence in the government or its resignation.
5. Its introduction in the House requires seven days' notice.	5. Its introduction in the House requires one month's notice.
6. It is drafted by the concerned department in consultation with the law department.	6. Its drafting is the responsibility of the member concerned.

[18] An Introduction to Parliament of India, Rajya Sabha Secretariat, fourth edition, 2007, p. 24.

Ordinary Bills

Every ordinary bill has to pass through the following five stages in the Parliament before it finds a place on the Statute Book:

1. First Reading An ordinary bill can be introduced in either House of Parliament. Such a bill can be introduced either by a minister or by any other member. The member who wants to introduce the bill has to ask for the leave of the House. When the House grants leave to introduce the bill, the mover of the bill introduces it by reading its title and objectives. No discussion on the bill takes place at this stage. Later, the bill is published in the Gazette of India. If a bill is published in the Gazette before its introduction, leave of the House to introduce the bill is not necessary.[19] The introduction of the bill and its publication in the Gazette constitute the first reading of the bill.

2. Second Reading During this stage, the bill receives not only the general but also the detailed scrutiny and assumes its final shape. Hence, it forms the most important stage in the enactment of a bill. In fact, this stage involves three more sub-stages, namely, stage of general discussion, committee stage and consideration stage.

(a) Stage of General Discussion The printed copies of the bill are distributed to all the members. The principles of the bill and its provisions are discussed generally, but the details of the bill are not discussed.

At this stage, the House can take any one of the following four actions:

(i) It may take the bill into consideration immediately or on some other fixed date;

(ii) It may refer the bill to a select committee of the House;

(iii) It may refer the bill to a joint committee of the two Houses; and

(iv) It may circulate the bill to elicit public opinion.

A Select Committee consists of members of the House where the bill has originated and a joint committee consists of members of both the Houses of Parliament.

(b) Committee Stage The usual practice is to refer the bill to a select committee of the House. This committee examines the bill thoroughly and in detail, clause by clause. It can also amend its provisions, but without altering the principles underlying it. After completing the scrutiny and discussion, the committee reports the bill back to the House.

(c) Consideration Stage The House, after receiving the bill from the select committee, considers the provisions of the bill clause by clause. Each clause is discussed and voted upon separately. The members can also move amendments and if accepted, they become part of the bill.

3. Third Reading At this stage, the debate is confined to the acceptance or rejection of the bill as a whole and no amendments are allowed, as the general principles underlying the bill have already been scrutinised during the stage of second reading. If the majority of members present and voting accept the bill, the bill is regarded as passed by the House. Thereafter, the bill is authenticated by the presiding officer of the House and transmitted to the second House for consideration and approval. A bill is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.

4. Bill in the Second House In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading. There are four alternatives before this House:

(a) it may pass the bill as sent by the first house (ie, without amendments);

[19] Under Rule 64 of Lok Sabha, the Speaker may, on request being made to him, order the publication of any bill in the Gazette, although no motion has been made for leave to introduce the bill. In that case, it shall not be necessary to move for leave to introduce the bill and if the bill is afterwards introduced, it shall not be necessary to publish it again.

(b) it may pass the bill with amendments and return it to the first House for reconsideration;
(c) it may reject the bill altogether; and
(d) it may not take any action and thus keep the bill pending.

If the second House passes the bill without any amendments or the first House accepts the amendments suggested by the second House, the bill is deemed to have been passed by both the Houses and the same is sent to the President for his/her assent. On the other hand, if the first House rejects the amendments suggested by the second House or the second House rejects the bill altogether or the second House does not take any action for six months, a deadlock is deemed to have taken place. To resolve such a deadlock, the President can summon a joint sitting of the two Houses. If the majority of members present and voting in the joint sitting approves the bill, the bill is deemed to have been passed by both the Houses.

5. Assent of the President Every bill after being passed by both Houses of Parliament either singly or at a joint sitting, is presented to the President for his/her assent. There are three alternatives before the President:

(a) he/she may give his/her assent to the bill; or
(b) he/she may withhold his/her assent to the bill; or
(c) he/she may return the bill for reconsideration of the Houses.

If the President gives his/her assent to the bill, the bill becomes an act and is placed on the Statute Book. If the President withholds his/her assent to the bill, it ends and does not become an act. If the President returns the bill for reconsideration and if it is passed by both the Houses again with or without amendments and presented to the President for his/her assent, the President must give his/her assent to the bill. Thus, the President enjoys only a "suspensive veto."

Money Bills

Article 110 of the Constitution deals with the definition of money bills. It states that a bill is deemed to be a money bill if it contains 'only' provisions dealing with all or any of the following matters:

1. The imposition, abolition, remission, alteration or regulation of any tax;
2. The regulation of the borrowing of money by the Union government;
3. The custody of the Consolidated Fund of India or the contingency fund of India, the payment of moneys into or the withdrawal of money from any such fund;
4. The appropriation of money out of the Consolidated Fund of India;
5. Declaration of any expenditure charged on the Consolidated Fund of India or increasing the amount of any such expenditure;
6. The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money, or the audit of the accounts of the Union or of a state; or
7. Any matter incidental to any of the matters specified above.

However, a bill is not to be deemed to be a money bill by reason only that it provides for:

1. the imposition of fines or other pecuniary penalties, or
2. the demand or payment of fees for licenses or fees for services rendered; or
3. the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

If any question arises whether a bill is a money bill or not, the decision of the Speaker of the Lok Sabha is final. His/her decision in this regard cannot be questioned in any court of law or in the either House of Parliament or even the President. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the President for assent, the Speaker endorses it as a money bill.

The Constitution lays down a special procedure for the passing of money bills in the Parliament. A money bill can only be introduced in the Lok Sabha and that too on the recommendation of the President. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a money bill is passed by the Lok Sabha, it is transmitted to the Rajya Sabha for its consideration. The Rajya Sabha has restricted powers with regard to a money bill. It cannot reject or amend a money bill. It can only make the recommendations. It must return the bill to the Lok Sabha within 14 days, whether with or without recommendations. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.

If the Lok Sabha accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form. If the Lok Sabha does not accept any recommendation, the bill is then deemed to have passed by both the Houses in the form originally passed by the Lok Sabha without any change.

If the Rajya Sabha does not return the bill to the Lok Sabha within 14 days, the bill is deemed to have been passed by both the Houses in the form originally passed by the Lok Sabha. Thus, the Lok Sabha has more powers than Rajya Sabha with regard to a money bill. On the other hand, both the Houses have equal powers with regard to an ordinary bill.

Finally, when a money bill is presented to the President, he/she may either give his/her assent to the bill or withhold his/her assent to the bill but cannot return the bill for reconsideration of the Houses. Normally, the President gives his/her assent to a money bill as it is introduced in the Parliament with his/her prior permission.

Table 23.4 shows the differences between the procedures for the enactment of ordinary bills and money bills.

Table 23.4 Ordinary Bill vs Money Bill

Ordinary Bill	Money Bill
1. It can be introduced either in the Lok Sabha or the Rajya Sabha.	1. It can be introduced only in the Lok Sabha and not in the Rajya Sabha.
2. It can be introduced either by a minister or by a private member.	2. It can be introduced only by a minister.
3. It is introduced without the recommendation of the President.	3. It can be introduced only on the recommendation of the President.
4. It can be amended or rejected by the Rajya Sabha.	4. It cannot be amended or rejected by the Rajya Sabha. The Rajya Sabha should return the bill with or without recommendations, which may be accepted or rejected by the Lok Sabha.
5. It can be detained by the Rajya Sabha for a maximum period of six months.	5. It can be detained by the Rajya Sabha for a maximum period of 14 days only.
6. It does not require the certification of the Speaker when transmitted to the Rajya Sabha (if it has originated in the Lok Sabha).	6. It requires the certification of the Speaker when transmitted to the Rajya Sabha.
7. It is sent for the President's assent only after being approved by both the Houses. In case of a deadlock due to disagreement between the two Houses, a joint sitting of both the houses can be summoned by the President to resolve the deadlock.	7. It is sent for the President's assent even if it is approved by only Lok Sabha. There is no chance of any disagreement between the two Houses and hence, there is no provision of joint sitting of both the Houses in this regard.
8. Its defeat in the Lok Sabha may lead to the resignation of the government (if it is introduced by a minister).	8. Its defeat in the Lok Sabha leads to the resignation of the government.
9. It can be approved or rejected or returned for reconsideration by the President.	9. It can be approved or rejected but cannot be returned for reconsideration by the President.

Financial Bills

Financial bills are those bills that deal with fiscal matters, that is, revenue or expenditure. However, the Constitution uses the term 'financial bill' in a technical sense. Financial bills are of three kinds:

1. Money bills—Article 110
2. Financial bills (I)—Article 117 (1)
3. Financial bills (II)—Article 117 (3)

This classification implies that money bills are simply a species of financial bills. Hence, all money bills are financial bills but all financial bills are not money bills. Only those financial bills are money bills which contain exclusively those matters which are mentioned in Article 110 of the Constitution. These are also certified by the Speaker of Lok Sabha as money bills. The financial bills (I) and (II), on the other hand, have been dealt with in Article 117 of the Constitution.

Financial Bills (I) A financial bill (I) is a bill that contains not only any or all the matters mentioned in Article 110, but also other matters of general legislation. For instance, a bill that contains a borrowing clause, but does not exclusively deal with borrowing. In two respects, a financial bill (I) is similar to a money bill—(a) both of them can be introduced only in the Lok Sabha and not in the Rajya Sabha, and (b) both of them can be introduced only on the recommendation of the President. In all other respects, a financial bill (I) is governed by the same legislative procedure applicable to an ordinary bill. Hence, it can be either rejected or amended by the Rajya Sabha (except that an amendment other than for reduction or abolition of a tax cannot be moved in the Rajya Sabha or in the Lok Sabha without the recommendation of the President i.e., the recommendation of President is not required for moving an amendment making provision for the reduction or abolition of a tax). In case of a disagreement between the two Houses over such a bill, the President can summon a joint sitting of the two Houses to resolve the deadlock. When the bill is presented to the President, he/she can either give his/her assent to the bill or withhold his/her assent to the bill or return the bill for reconsideration of the Houses.

Financial Bills (II) A financial bill (II) contains provisions involving expenditure from the Consolidated Fund of India, but does not include any of the matters mentioned in Article 110. It is treated as an ordinary bill and in all respects, it is governed by the same legislative procedure which is applicable to an ordinary bill. The only special feature of this bill is that it cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the bill. Hence, financial bill (II) can be introduced in either House of Parliament and recommendation of the President is not necessary for its introduction. In other words, the recommendation of the President is not required at the introduction stage but is required at the consideration stage. It can be either rejected or amended by either House of Parliament. In case of a disagreement between the two Houses over such a bill, the President can summon a joint sitting of the two Houses to resolve the deadlock. When the bill is presented to the President, he/she can either give his/her assent to the bill or withhold his/her assent to the bill or return the bill for reconsideration of the Houses.

JOINT SITTING OF TWO HOUSES

Joint sitting is an extraordinary machinery provided by the Constitution to resolve a deadlock between the two Houses over the passage of a bill. A deadlock is deemed to have taken place under any one of the following three situations after a bill has been passed by one House and transmitted to the other House:

1. if the bill is rejected by the other House;
2. if the Houses have finally disagreed as to the amendments to be made in the bill; or
3. if more than six months have elapsed from the date of the receipt of the bill by the other House without the bill being passed by it.

In the above three situations, the President can summon both the Houses to meet in a joint sitting for the purpose of deliberating and voting on the bill. It must be noted here that the provision of joint sitting is applicable to ordinary bills or financial bills only and not to money bills or Constitutional amendment bills. In the case of a money bill, the Lok Sabha has overriding powers, while a Constitutional amendment bill must be passed by each House separately.

In reckoning the period of six months, no account can be taken of any period during which the other House (to which the bill has been sent) is prorogued or adjourned for more than four consecutive days.

If the bill (under dispute) has already lapsed due to the dissolution of the Lok Sabha, no joint sitting can be summoned. But, the joint sitting can be held if the Lok Sabha is dissolved after the President has notified his/her intention to summon such a sitting (as the bill does not lapse in this case). After the President notifies his/her intention to summon a joint sitting of the two Houses, none of the Houses can proceed further with the bill.

The Speaker of Lok Sabha presides over a joint sitting of the two Houses and the Deputy Speaker, in his/her absence. If the Deputy Speaker is also absent from a joint sitting, the Deputy Chairman of Rajya Sabha presides. If he/she is also absent, such other person as may be determined by the members present at the joint sitting, presides over the meeting. It is clear that the Chairman of Rajya Sabha does not preside over a joint sitting as he/she is not a member of either House of Parliament.

The quorum to constitute a joint sitting is one-tenth of the total number of members of the two Houses. The joint sitting is governed by the Rules of Procedure of Lok Sabha and not of Rajya Sabha.

If the bill in dispute is passed by a majority of the total number of members of both the Houses present and voting in the joint sitting, the bill is deemed to have been passed by both the Houses. Normally, the Lok Sabha with greater number wins the battle in a joint sitting.

The Constitution has specified that at a joint sitting, new amendments to the bill cannot be proposed except in two cases:

1. those amendments that have caused final disagreement between the Houses; and
2. those amendments that might have become necessary due to the delay in the passage of the bill.

Since 1950, the provision regarding the joint sitting of the two Houses has been invoked only thrice. The bills that have been passed at joint sittings are:

1. Dowry Prohibition Bill, 1960.[20]
2. Banking Service Commission (Repeal) Bill, 1977.[21]
3. Prevention of Terrorism Bill, 2002.[22]

BUDGET IN PARLIAMENT

The Constitution refers to the budget as the 'annual financial statement'. In other words, the term 'budget' has nowhere been used in the Constitution. It is the popular name for the 'annual financial statement' that has been dealt with in Article 112 of the Constitution.

The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year, which begins on 1 April and ends on 31 March of the following year.

In addition to the estimates of receipts and expenditure, the budget contains certain other elements. Overall, the budget contains the following:

1. Estimates of revenue and capital receipts;
2. Ways and means to raise the revenue;

[20]The Lok Sabha did not agree to the amendments made by the Rajya Sabha. A joint siting was held on 6 May 1961.

[21]The bill was passed by the Lok Sabha but rejected by the Rajya Sabha. A joint sitting was held on 16 May 1978.

[22]The bill was passed by the Lok Sabha but rejected by the Rajya Sabha. A joint sitting was held on 26 March 2002. The bill was passed when 425 members voted for it and 296 against.

3. Estimates of expenditure;
4. Details of the actual receipts and expenditure of the closing financial year and the reasons for any deficit or surplus in that year; and
5. Economic and financial policy of the coming year, that is, taxation proposals, prospects of revenue, spending programme and introduction of new schemes/projects.

Merger of Railway Budget

Till 2017, the Government of India had two budgets, namely, the Railway Budget and the General Budget. While the former consisted of the estimates of receipts and expenditures of only the Ministry of Railways, the latter consisted of the estimates of receipts and expenditure of all the ministries of the Government of India (except the railways).

The Railway Budget was separated from the General Budget in 1924 on the recommendations of the Acworth Committee Report (1921). The reasons or objectives of this separation were as follows:

1. To introduce flexibility in railway finance.
2. To facilitate a business approach to the railway policy.
3. To secure stability of the general revenues by providing an assured annual contribution from railway revenues.
4. To enable the railways to keep their profits for their own development (after paying a fixed annual contribution to the general revenues).

In 2017, the Central Government merged the railway budget into the general budget. Hence, there is now only one budget for the Government of India i.e., Union Budget.

Constitutional Provisions

The Constitution of India contains the following provisions with regard to the enactment of budget:

1. The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of estimated receipts and expenditure of the Government of India for that year (Article 112).
2. No demand for a grant shall be made except on the recommendation of the President (Article 113).
3. No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law (Article 114).
4. No money bill imposing tax shall be introduced in the Parliament except on the recommendation of the President, and such a bill shall not be introduced in the Rajya Sabha (Article 117).
5. No tax shall be levied or collected except by authority of law (Article 265).
6. Parliament can reduce or abolish a tax but cannot increase it (Article 117).
7. The Constitution has also defined the relative roles or position of both the Houses of Parliament with regard to the enactment of the budget in the following way:
   (a) A money bill or finance bill dealing with taxation cannot be introduced in the Rajya Sabha—it must be introduced only in the Lok Sabha (Article 109).
   (b) The Rajya Sabha has no power to vote on the demand for grants; it is the exclusive privilege of the Lok Sabha (Article 113).
   (c) The Rajya Sabha should return the Money bill (or Finance bill) to the Lok Sabha within fourteen days. The Lok Sabha can either accept or reject the recommendations made by Rajya Sabha in this regard (Article 109).
8. The estimates of expenditure embodied in the budget shall show separately the expenditure charged on the Consolidated Fund of India and the expenditure made from the Consolidated Fund of India (Article 112).
9. The budget shall distinguish expenditure on revenue account from other expenditure (Article 112).
10. The expenditure charged on the Consolidated Fund of India shall not be submitted to the vote of Parliament.

However, it can be discussed by the Parliament (Article 113).

11. The Lok Sabha can approve or refuse any demand or reduce the amount specified in the demand but cannot increase it (Article 113).
12. No such amendment can be proposed to the appropriation bill in either House of the Parliament that will have the effect of varying the amount or altering the destination of any grant voted, or of varying the amount of any expenditure changed on the Consolidated Fund of India (Article 114).
13. The Lok Sabha can make any grant in advance (Vote on Account) in respect to the estimated expenditure for a part of the financial year, pending the completion of the voting of the demands for grants and the enactment of the appropriation bill (Article 116).

Charged Expenditure

The budget consists of two types of expenditure—the expenditure 'charged' upon the Consolidated Fund of India and the expenditure 'made' from the Consolidated Fund of India. The charged expenditure is non-votable by the Parliament, that is, it can only be discussed by the Parliament, while the other type has to be voted by the Parliament. The list of the charged expenditure is as follows:

1. Emoluments and allowances of the President and other expenditure relating to his/her office.
2. Salaries and allowances of the Chairman and the Deputy Chairman of the Rajya Sabha and the Speaker and the Deputy Speaker of the Lok Sabha.
3. Salaries, allowances and pensions of the judges of the Supreme Court.
4. Pensions of the judges of high courts.
5. Salary, allowances and pension of the Comptroller and Auditor General of India.
6. Salaries, allowances and pension of the chairman and members of the Union Public Service Commission.
7. Administrative expenses of the Supreme Court, the office of the Comptroller and Auditor General of India and the Union Public Service Commission including the salaries, allowances and pensions of the persons serving in these offices.
8. The debt charges for which the Government of India is liable, including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt.
9. Any sum required to satisfy any judgement, decree or award of any court or arbitral tribunal.
10. Any other expenditure declared by the Parliament to be so charged.

Stages in Enactment

The budget goes through the following six stages in the Parliament:

1. Presentation of budget.
2. General discussion.
3. Scrutiny by departmental committees.
4. Voting on demands for grants.
5. Passing of appropriation bill.
6. Passing of finance bill.

1. Presentation of Budget Conventionally, the budget is presented to the Lok Sabha by the finance minister on the last working day of February. Since 2017, the presentation of the budget has been advanced to 1st of February.

The Budget can also be presented to the House in two or more parts and when such presentation takes place, each part shall be dealt with as if it were the budget. Further, there shall be no discussion of the budget on the day on which it is presented to the House.

The finance minister presents the budget with a speech known as the 'budget speech'. At the end of the speech in the Lok Sabha, the budget is laid before the Rajya Sabha, which can only discuss it and has no power to vote on the demands for grants.

The budget documents presented to the Parliament comprise of the following[22a]:

(i) Budget Speech
(ii) Annual Financial Statement
(iii) Demands for Grants
(iv) Finance Bill
(v) Statements mandated under the FRBM Act[22b]:
  (a) Macro-Economic Framework Statement
  (b) Fiscal Policy Strategy Statement
  (c) Medium Term Fiscal Policy Statement
(vi) Expenditure Budget
(vii) Receipts Budget
(viii) Expenditure Profile
(ix) Memorandum Explaining the Provisions in the Finance Bill
(x) Budget at a Glance
(xi) Outcome Budget (Output - Outcome Monitoring Framework)
(xii) Key Features of the Budget
(xiii) Implementation of Previous Budget Announcements
(xiv) Key to Budget Documents

Earlier, the Economic Survey also used to be presented to the Parliament along with the budget. Now, it is presented one day or a few days before the presentation of the budget. This report is prepared by the finance ministry and indicates the status of the national economy.

2. General Discussion The general discussion on budget begins a few days after its presentation. It takes place in both the Houses of Parliament and lasts usually for three to four days.

During this stage, the Lok Sabha can discuss the budget as a whole or on any question of principle involved therein but no cut motion can be moved nor can the budget be submitted to the vote of the House. The finance minister has a general right of reply at the end of the discussion.

3. Scrutiny by Departmental Committees After the general discussion on the budget is over, the Houses are adjourned for about three to four weeks. During this gap period, the 24 departmental standing committees of Parliament examine and discuss in detail the demands for grants of the concerned ministers and prepare reports on them. These reports are submitted to both the Houses of Parliament for consideration.

The standing committee system established in 1993 (and expanded in 2004) makes parliamentary financial control over ministries much more detailed, close, in-depth and comprehensive.

4. Voting on Demands for Grants In the light of the reports of the departmental standing committees, the Lok Sabha takes up voting of demands for grants. The demands are presented ministrywise. A demand becomes a grant after it has been duly voted.

Two points should be noted in this context. One, the voting of demands for grants is the exclusive privilege of the Lok Sabha, that is, the Rajya Sabha has no power of voting the demands. Second, the voting is confined to the votable part of the budget—the expenditure charged on the Consolidated Fund of India is not submitted to the vote (it can only be discussed).

Each demand is voted separately by the Lok Sabha. During this stage, the members of Parliament can discuss the details of the budget. They can also move motions to reduce any demand for grant. Such motions are called as 'cut motion', which are of three kinds:

(a) Policy Cut Motion It represents the disapproval of the policy underlying the demand. It states that the amount of the demand be reduced to ₹1. The members can also advocate an alternative policy.

(b) Economy Cut Motion It represents the economy that can be affected in the proposed expenditure. It states that the amount of the

[22a] Budget Manual, Ministry of Finance, Government of India, November 2022, pp. 2–3.

[22b] The Fiscal Responsibility and Budget Management Act, 2003 was enacted to provide for the responsibiity of the central government to ensure inter-generational equity in fiscal management and long-term macro-economic stability.

demand be reduced by a specified amount (which may be either a lumpsum reduction in the demand or ommission or reduction of an item in the demand).

(c) Token Cut Motion It ventilates a specific grievance that is within the sphere of responsibility of the Government of India. It states that the amount of the demand be reduced by ₹100.

A cut motion, to be admissible, must satisfy the following conditions:

(i) It should relate to one demand only.
(ii) It should be clearly expressed and should not contain arguments or defamatory statements.
(iii) It should be confined to one specific matter.
(iv) It should not make suggestions for the amendment or repeal of existing laws.
(v) It should not refer to a matter that is not primarily the concern of Union government.
(vi) It should not relate to the expenditure charged on the Consolidated Fund of India.
(vii) It should not relate to a matter that is under adjudication by a court.
(viii) It should not raise a question of privilege.

The significance of a cut motion lies in: (a) facilitating the initiation of concentrated discussion on a specific demand for grant; and (b) upholding the principle of responsible government by probing the activities of the government. However, the cut motion do not have much utility in practice. They are only moved and discussed in the House but not passed as the government enjoys majority support. Their passage by the Lok Sabha amounts to the expressions of want of parliamentary confidence in the government and may lead to its resignation.

On the last day of the days allotted for discussion and voting on the demands for grants, the Speaker puts all the remaining demands to vote and disposes them whether they have been discussed by the members or not. This is known as 'guillotine'.

5. Passing of Appropriation Bill The Constitution states that 'no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law'. Accordingly, after the demands for grants are voted on and passed by the Lok Sabha, an appropriation bill is introduced to provide for the appropriation, out of the Consolidated Fund of India, of all money required to meet:

(a) The grants voted by the Lok Sabha.
(b) The expenditure charged on the Consolidated Fund of India.

No such amendment can be proposed to the appropriation bill in either house of the Parliament that will have the effect of varying the amount or altering the destination of any grant voted, or of varying the amount of any expenditure charged on the Consolidated Fund of India.

The Appropriation Bill becomes the Appropriation Act after it is assented to by the President. This act authorises (or legalises) the payments from the Consolidated Fund of India. This means that the government cannot withdraw money from the Consolidated Fund of India till the enactment of the appropriation bill. This takes time and usually goes on till the end of April. But the government needs money to carry on its normal activities after 31 March (the end of the financial year). To overcome this functional difficulty, the Constitution has authorised the Lok Sabha to make any grant in advance in respect to the estimated expenditure for a part of the financial year, pending the completion of the voting of the demands for grants and the enactment of the appropriation bill. This provision is known as the 'Vote on Account'. It is passed (or granted) after the general discussion on budget is over. It is generally granted for two months for an amount equivalent to one-sixth of the total estimation.

In an election year (when the Lok Sabha is to be dissolved or a new Lok Sabha is constituted), the Vote on Account may be taken for a longer period (for about 3 to 5 months).

From 2017 onwards, the Budget session is advanced to 31st January and the Union

Budget is presented on 1st February, almost a month ahead of the usual date in the past. This change is intended to enable the Parliament to avoid a Vote on Account and pass a single Appropriation Bill for the year, before the close of the financial year.

After the advancement of budget cycle from the last day of February to the first day of February, the Vote on Account is presented in the election year when Interim Budget is presented.

In the year in which General Elections to the Lok Sabha are held, the Interim Budget is presented to the Parliament. After the General Elections are over and assumption of office by the new government, the Regular Budget is presented to the Parliament on a date as decided by the new government.

6. Passing of Finance Bill The 'Finance Bill' means the bill ordinarily introduced in each year to give effect to the financial proposals of the Government of India for the next financial year, and includes a bill to give effect to supplementary financial proposals for any period. It is subjected to all the conditions applicable to a Money Bill. Unlike the Appropriation Bill, the amendments (seeking to reject or reduce a tax) can be moved in the case of finance bill.

During this stage, a member can discuss matters relating to general administration, local grievances within the sphere of the responsibility of the Government of India or monetary or financial policy of the government.

According to the Provisional Collection of Taxes Act of 1931, the Finance Bill must be enacted (i.e., passed by the Parliament and assented to by the President) within 75 days.

The Finance Act legalises the income side of the budget and completes the process of the enactment of the budget.

Other Grants

In addition to the budget that contains the ordinary estimates of income and expenditure for one financial year, various other grants are made by the Parliament under extraordinary or special circumstances:

Supplementary Grant It is granted when the amount authorised by the Parliament through the appropriation act for a particular service for the current financial year is found to be insufficient for that year.

Additional Grant It is granted when a need has arisen during the current financial year for additional expenditure upon some new service not contemplated in the budget for that year.

Excess Grant It is granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year. It is voted by the Lok Sabha after the financial year. Before the demands for excess grants are submitted to the Lok Sabha for voting, they must be approved by the Public Accounts Committee of Parliament.

Vote of Credit It is granted for meeting an unexpected demand upon the resources of India, when on account of the magnitude or the indefinite character of the service, the demand cannot be stated with the details ordinarily given in a budget. Hence, it is like a blank cheque given to the Executive by the Lok Sabha.

Exceptional Grant It is granted for a special purpose and forms no part of the current service of any financial year.

Token Grant It is granted when funds to meet the proposed expenditure on a new service can be made available by reappropriation. A demand for the grant of a token sum is submitted to the vote of the Lok Sabha and if assented, funds are made available. Reappropriation involves transfer of funds from one head to another. It does not involve any additional expenditure.

Supplementary, additional, excess and exceptional grants and vote of credit are regulated by the same procedure which is applicable in the case of a regular budget.

Funds

The Constitution of India provides for the following three kinds of funds for the Central government:

1. Consolidated Fund of India (Article 266)
2. Public Account of India (Article 266)
3. Contingency Fund of India (Article 267)

Consolidated Fund of India It is a fund to which all receipts are credited and all payments are debited. In other words, (a) all revenues received by the Government of India; (b) all loans raised by the Government by the issue of treasury bills, loans or ways and means of advances; and (c) all money received by the government in repayment of loans forms the Consolidated Fund of India. All the legally authorised payments on behalf of the Government of India are made out of this fund. No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.

Public Account of India All other public money (other than those which are credited to the Consolidated Fund of India) received by or on behalf of the Government of India shall be credited to the Public Account of India. This includes provident fund deposits, judicial deposits, savings bank deposits, departmental deposits, remittances and so on. This account is operated by executive action, that is, the payments from this account can by made without parliamentary appropriation. Such payments are mostly in the nature of banking transactions.

Contingency Fund of India The Constitution authorised the Parliament to establish a 'Contingency Fund of India', into which amounts determined by law are paid from time to time. Accordingly, the Parliament enacted the contingency fund of India Act in 1950. This fund is placed at the disposal of the President, and he/she can make advances out of it to meet unforeseen expenditure pending its authorisation by the Parliament. The fund is held by the finance secretary on behalf of the President. Like the public account of India, it is also operated by executive action.

MULTIFUNCTIONAL ROLE OF PARLIAMENT

In the 'Indian politico-administrative system', the Parliament occupies a central position and has a multifunctional role. It enjoys extensive powers and performs a variety of functions towards the fulfilment of its constitutionally expected role. Its powers and functions can be classified under the following heads:

1. Legislative Powers and Functions
2. Executive Powers and Functions
3. Financial Powers and Functions
4. Constituent Powers and Functions
5. Judicial Powers and Functions
6. Electoral Powers and Functions
7. Other powers and functions.

I. Legislative Powers and Functions

The primary function of Parliament is to make laws for the governance of the country. It has exclusive power to make laws on the subjects enumerated in the Union List (which at present has 98 subjects, originally 97 subjects) and on the residuary subjects (that is, subjects not enumerated in any of the three lists). With regard to Concurrent List (which has at present 52 subjects, originally 47 subjects), the Parliament has overriding powers, that is, the law of Parliament prevails over the law of the state legislature in case of a conflict between the two.

The Constitution also empowers the Parliament to make laws on the subjects enumerated in the State List (which at present has 59 subjects, originally 66 subjects) under the following five abnormal circumstances:

(a) when Rajya Sabha passes a resolution to that effect.
(b) when a proclamation of National Emergency is in operation.
(c) when two or more states make a joint request to the Parliament.

(d) when necessary to give effect to international agreements, treaties and conventions.
(e) when President's Rule is in operation in the state.

All the ordinances issued by the President (during the recess of the Parliament) must be approved by the Parliament within six weeks after its reassembly. An ordinance becomes inoperative if it is not approved by the parliament within that period.

The Parliament makes laws in a skeleton form and authorises the Executive to make detailed rules and regulations within the framework of the parent law. This is known as *delegated legislation* or executive legislation or subordinate legislation. Such rules and regulations are placed before the Parliament for its examination.

2. Executive Powers and Functions

The Constitution of India established a parliamentary form of government in which the Executive is responsible to the Parliament for its policies and acts. Hence, the Parliament exercises control over the Executive through question-hour, zero hour, half-an-hour discussion, short duration discussion, calling attention motion, adjournment motion, no-confidence motion, censure motion and other discussions. It also supervises the activities of the Executive with the help of its committees like committee on government assurances, committee on subordinate legislation, committee on petitions, etc.

The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular. As a part of collective responsibility, there is individual responsibility, that is, each minister is individually responsible for the efficient administration of the ministry under his/her charge. This means that they continue in office so long as they enjoy the confidence of the majority members in the Lok Sabha. In other words, the council of ministers can be removed from office by the Lok Sabha by passing a no-confidence motion. The Lok Sabha can also express lack of confidence in the government in the following ways:

(a) By not passing a motion of thanks on the President's inaugural address.
(b) By rejecting a money bill.
(c) By passing a censure motion or an adjournment motion.
(d) By defeating the government on a vital issue.
(e) By passing a cut motion.

Therefore, "the first function of Parliament can be said to be to select the group which is to form the government, support and sustain it in power so long as it enjoys its confidence, and to expel it when it ceases to do so, and leave it to the people to decide at the next general election."[23]

3. Financial Powers and Functions

No tax can be levied or collected and no expenditure can be incurred by the Executive except under the authority and with the approval of Parliament. Hence, the budget is placed before the Parliament for its approval. The enactment of the budget by the Parliament legalises the receipts and expenditure of the government for the ensuing financial year.

The Parliament also scrutinises government spending and financial performance with the help of its financial committees. These include public accounts committee, estimates committee and committee on public undertakings. They bring out the cases of illegal, irregular, unauthorised, improper usage and wastage and extravagance in public expenditure.

Therefore, the parliamentary control over the Executive in financial matters operates in two stages:

(a) budgetary control, that is, control before the appropriation of grants through the enactment of the budget; and
(b) post-budgetary control, that is, control after the appropriation of grants through the three financial committees.

[23]N.N. Mallya: *Indian Parliament*, p. 39.

The budget is based on the principle of annuity, that is, the Parliament grants money to the government for one financial year. If the granted money is not spent by the end of the financial year, then the balance expires and returns to the Consolidated Fund of India. This practice is known as the 'rule of lapse'. It facilitates effective financial control by the Parliament as no reserve funds can be built without its authorisation. However, the observance of this rule leads to heavy rush of expenditure towards the close of the financial year. This is popularly called as 'March Rush'.

4. Constituent Powers and Functions

The Parliament is vested with the powers to amend the Constitution by way of addition, variation or repeal of any provision. The major part of the Constitution can be amended by the Parliament with special majority, that is, a majority of the total membership of each House and a majority of not less than two-thirds of the members present and voting in each House. Some other provisions of the Constitution can be amended by the Parliament with simple majority, that is, a majority of the members present and voting in each House of Parliament. Only a few provisions of the Constitution can be amended by the Parliament (by special majority) and with the consent of at least half of the State Legislatures (by simple majority). However, the power to initiate the process of the amendment of the Constitution (in all the three cases) lies exclusively in the hands of the Parliament and not the state legislature. There is only one exception, that is, the state legislature can pass a resolution requesting the Parliament for the creation or abolition of the legislative council in the state. Based on the resolution, the Parliament makes an act for amending the Constitution to that effect. To sum up, the Parliament can amend the Constitution in three ways:

(a) By simple majority;
(b) By special majority; and
(c) By special majority but with the consent of half of all the state legislatures.

The constituent power of the Parliament is not unlimited; it is subject to the 'basic structure' of the Constitution. In others words, the Parliament can amend any provision of the Constitution except the 'basic features' of the Constitution. This was ruled by the Supreme Court in the *Kesavananda Bharati* case[24] (1973).

5. Judicial Powers and Functions

The judicial powers and functions of the Parliament include the following:

(a) It can impeach the President for the violation of the Constitution.
(b) It can remove the Vice-President from his/her office.
(c) It can recommend the removal of judges (including chief justice) of the Supreme Court and the high courts, chief election commissioner, state election commissioner and comptroller and auditor general to the President.
(d) It can punish its members or outsiders for the breach of its privileges or its contempt.

6. Electoral Powers and Functions

The Parliament participates in the election of the President (along with the state legislative assemblies) and elects the Vice-President. The Lok Sabha elects its Speaker and Deputy Speaker, while the Rajya Sabha elects its Deputy Chairman.

The Parliament is also authorised to make laws to regulate the elections to the offices of President and Vice-President, to both the Houses of Parliament and to both the Houses of state legislature. Accordingly, Parliament enacted the Presidential and Vice-Presidential Elections Act (1952), the Representation of the People Act (1950), the Representation of the People Act (1951), etc.

[24] *Kesavananda Bharati* vs. *State of Kerala* (1973).

7. Other Powers and Functions

The various other powers and functions of the Parliament include:

(a) It serves as the highest deliberative body in the country. It discusses various issues of national and international significance.

(b) It approves all the three types of emergencies (national, state and financial) proclaimed by the President.

(c) It can create or abolish the state legislative councils on the recommendation of the concerned state legislative assemblies.

(d) It can increase or decrease the area, alter the boundaries and change the names of states of the Indian Union.

(e) It can regulate the organisation and jurisdiction of the Supreme Court and high courts and can establish a common high court for two or more states.

INEFFECTIVENESS OF PARLIAMENTARY CONTROL

The parliamentary control over government and administration in India is more theoretical than practical. In reality, the control is not as effective as it ought to be. The following factors are responsible for this:

(a) The Parliament has neither time nor expertise to control the administration which has grown in volume as well as complexity.

(b) Parliament's financial control is hindered by the technical nature of the demands for grants. The parliamentarians being laymen cannot understand them properly and fully.

(c) The legislative leadership lies with the Executive and it plays a significant role in formulating policies.

(d) The very size of the Parliament is too large and unmanagable to be effective.

(e) The majority support enjoyed by the Executive in the Parliament reduces the possibility of effective criticism.

(f) The financial committees like Public Accounts Committee examines the public expenditure after it has been incurred by the Executive. Thus, they do post mortem work.

(g) The increased recourse to 'guillotine' reduced the scope of financial control.

(h) The growth of 'delegated legislation' has reduced the role of Parliament in making detailed laws and has increased the powers of bureaucracy.

(i) The frequent promulgation of ordinances by the President dilutes the Parliament's power of legislation.

(j) The Parliament's control is sporadic, general and mostly political in nature.

(k) Lack of strong and steady opposition in the Parliament, and a setback in the parliamentary behaviour and ethics, have also contributed to the ineffectiveness of legislative control over administration in India.

POSITION OF RAJYA SABHA

The Constitutional position of the Rajya Sabha (as compared with the Lok Sabha) can be studied from three angles:

1. Where Rajya Sabha is equal to Lok Sabha.
2. Where Rajya Sabha is unequal to Lok Sabha.
3. Where Rajya Sabha has special powers that are not at all shared with the Lok Sabha.

Equal Status with Lok Sabha

In the following matters, the powers and status of the Rajya Sabha are equal to that of the Lok Sabha:

1. Introduction and passage of ordinary bills.
2. Introduction and passage of Constitutional amendment bills.
3. Introduction and passage of financial bills involving expenditure from the Consolidated Fund of India.
4. Election and impeachment of the President.
5. Election and removal of the Vice-President. However, Rajya Sabha alone can initiate the removal of the vice-President. He/she is removed by a resolution

passed by the Rajya Sabha by an effective majority and agreed to by the Lok Sabha by a simple majority.

6. Making recommendation to the President for the removal of Chief Justice and judges of Supreme Court and high courts, chief election commissioner and comptroller and auditor general.
7. Approval of ordinances issued by the President.
8. Approval of proclamation of all three types of emergencies by the President.
9. Selection of ministers including the Prime Minister. Under the Constitution, the ministers including the Prime Minister can be members of either House. However, irrespective of their membership, they are responsible only to the Lok Sabha.
10. Consideration of the reports of the constitutional bodies like Finance Commission, Union Public Service Commission, comptroller and auditor general, etc.
11. Enlargement of the jurisdiction of the Supreme Court and the Union Public Service Commission.

Unequal Status with Lok Sabha

In the following matters, the powers and status of the Rajya Sabha are unequal to that of the Lok Sabha:

1. A Money Bill can be introduced only in the Lok Sabha and not in the Rajya Sabha.
2. Rajya Sabha cannot amend or reject a Money Bill. It should return the bill to the Lok Sabha within 14 days, either with recommendations or without recommendations.
3. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha. In both the cases, the money bill is deemed to have been passed by the two Houses.
4. A financial bill, not containing solely the matters of Article 110, also can be introduced only in the Lok Sabha and not in the Rajya Sabha. But, with regard to its passage, both the Houses have equal powers.
5. The final power to decide whether a particular bill is a Money Bill or not is vested in the Speaker of the Lok Sabha.
6. The Speaker of Lok Sabha presides over the joint sitting of both the Houses.
7. The Lok Sabha with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both the Houses is less than that of the opposition parties.
8. Rajya Sabha can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the Lok Sabha).
9. A resolution for the discontinuance of the national emergency can be passed only by the Lok Sabha and not by the Rajya Sabha.
10. The Rajya Sabha cannot remove the council of ministers by passing a no-confidence motion. This is because the Council of ministers is collectively responsible only to the Lok Sabha. But, the Rajya Sabha can discuss and criticise the policies and activities of the government.

Special Powers of Rajya Sabha

The Rajya Sabha has been given four exclusive or special powers that are not enjoyed by the Lok Sabha:

1. It can authorise the Parliament to make a law on a subject enumerated in the State List (Article 249).
2. It can authorise the Parliament to create new All-India Services common to both the Centre and states (Article 312).
3. It alone can initiate a move for the removal of the Vice-President. In other words, a resolution for the removal of the Vice-President can be introduced only in the Rajya Sabha and not in the Lok Sabha (Article 67).
4. If a proclamation is issued by the President for imposing national emergency or President's rule or financial emergency at a time when the Lok Sabha has been dissolved or the dissolution of

the Lok Sabha takes place within the period allowed for its approval, then the proclamation can remain effective even if it is approved by the Rajya Sabha alone (Articles 352, 356 and 360).

An analysis of the above points makes it clear that the position of the Rajya Sabha in our constitutional system is not as weak as that of the House of Lords in the British constitutional system nor as strong as that of the Senate in the American constitutional system. Except in financial matters and control over the council of ministers, the powers and status of the Rajya Sabha in all other spheres are broadly equal and coordinate with that of the Lok Sabha.

Even though the Rajya Sabha has been given less powers as compared with the Lok Sabha, its utility is supported on the following grounds:

1. It checks hasty, defective, careless and ill-considered legislation made by the Lok Sabha by making provision of revision and thought.
2. It facilitates giving representation to eminent professionals and experts who cannot face the direct election. The President nominates 12 such persons to the Rajya Sabha.
3. It maintains the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

PARLIAMENTARY PRIVILEGES

Meaning

Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their parliamentary responsibilities.

The Constitution has also extended the parliamentary privileges to those persons who are entitled to speak and take part in the proceedings of a House of Parliament or any of its committees. These include the attorney general of India and Union ministers.

It must be clarified here that the parliamentary privileges do not extend to the President who is also an integral part of the Parliament.

Classification

Parliamentary privileges can be classified into two broad categories:

1. those that are enjoyed by each House of Parliament collectively, and
2. those that are enjoyed by the members individually.

Collective Privileges The privileges belonging to each House of Parliament collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same. The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of parliamentary proceedings without prior permission of the House. But this is not applicable in the case of a secret sitting of the House.
2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).[25]

[25] In 1977, the sixth Lok Sabha expelled Mrs. Indira Gandhi from its membership and sentenced her to jail for a week for committing a contempt of House while she was Prime Minister. But, the seventh Lok Sabha rescinded the resolution expelling her by describing it as politically motivated. In 1990, a former Minister, K.K. Tiwari, was reprimanded by the Rajya Sabha.

5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
7. The courts are prohibited to inquire into the proceedings of a House or its committees.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges The privileges belonging to the members individually are:

1. They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
2. They have freedom of speech in Parliament. No member is liable to any proceedings in any court for anything said or any vote given by him/her in Parliament or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament.[26]
3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.

[26]Article 121 of the Constitution says that no discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or of a high court in the discharge of his/her duties except upon a motion for presenting an address to the President praying for the removal of the judge. Under Rules 349 to 350 of the Lok Sabha, use of unparliamentary language or unparliamentary conduct of a member is prohibited.

Breach of Privilege and Contempt of the House

> "When any individual or authority disregards or attacks any of the privileges, rights and immunities, either of the member individually or of the House in its collective capacity, the offence is termed as breach of privilege and is punishable by the House."[27]

Any act or omission which obstructs a House of Parliament, its member or its officer in the performance of their functions or which has a tendency, directly or indirectly to produce results against the dignity, authority and honour of the House is treated as a contempt of the House.[28]

Though the two phrases, 'breach of privilege' and 'contempt of the House' are used interchangeably, they have different implications. 'Normally, a breach of privilege may amount to contempt of the House. Likewise, contempt of the House may include a breach of privilege also. Contempt of the House, however, has wider implications. There may be a contempt of the House without specifically committing a breach of privilege'.[29] Similarly, 'actions which are not breaches of any specific privilege but are offences against the dignity and authority of the House amount to contempt of the House'.[30] For example, disobedience to a legitimate order of the House is not a breach of privilege, but can be punished as contempt of the House.

Sources of Privileges

Originally, the Constitution (Article 105) expressedly mentioned two privileges, that is, freedom of speech in Parliament and right

[27]M.N. Kaul and S.L. Shakdher, *Practice and Procedure of Parliament*, First Edition, p. 157.

[28]Thomas Erskine May: *Parliamentary Practice*, 15th Edition, p. 109.

[29]Subhash C. Kashyap: *Our Parliament*, National Book Trust, 1999 Edition, p. 241.

[30]Thomas Erskine May: *Parliamentary Practice*, 16th Edition, p. 43.

of publication of its proceedings. With regard to other privileges, it provided that they were to be the same as those of the British House of Commons, its committees and its members on the date of its commencement (ie, 26 January, 1950), until defined by Parliament. The 44th Amendment Act of 1978 provided that the other privileges of each House of Parliament, its committees and its members are to be those which they had on the date of its commencement (ie, 20 June, 1979), until defined by Parliament. This means that the position with regard to other privileges remains same. In other words, the amendment has made only verbal changes by dropping a direct reference to the British House of Commons, without making any change in the implication of the provision.[31]

It should be noted here that the Parliament, till now, has not made any special law to exhaustively codify all the privileges. They are based on five sources, namely,

1. Constitutional provisions,
2. Various laws made by Parliament,
3. Rules of both the Houses,
4. Parliamentary conventions, and
5. Judicial interpretations.

SOVEREIGNTY OF PARLIAMENT

The doctrine of 'sovereignty of Parliament' is associated with the British Parliament. Sovereignty means the supreme power within the State. That supreme power in Great Britain lies with the Parliament. There are no 'legal' restrictions on its authority and jurisdiction.

Therefore, the sovereignty of Parliament (parliamentary supremacy) is a cardinal feature of the British constitutional system. According to AV Dicey, the British jurist, this principle has three implications:[32]

1. The Parliament can make, amend, substitute or repeal any law. De Lolme, a British political analyst, said, 'The British Parliament can do every thing except make a woman a man and a man a woman'.
2. The Parliament can make constitutional laws by the same procedure as ordinary laws. In other words, there is no legal distinction between the constituent authority and the legislative authority of the British Parliament.
3. The Parliamentary laws cannot be declared invalid by the Judiciary as being unconstitutional. In other words, there is no system of judicial review in Britain.

The Indian Parliament, on the other hand, cannot be regarded as a sovereign body in the similar sense as there are 'legal' restrictions on its authority and jurisdiction. The factors that limit the sovereignty of Indian Parliament are:

1. Written Nature of the Constitution

The Constitution is the fundamental law of the land in our country. It has defined the authority and jurisdiction of all the three organs of the Union government and the nature of interrelationship between them. Hence, the Parliament has to operate within the limits prescribed by the Constitution. There is also a legal distinction between the legislative authority and the constituent authority of the Parliament. Moreover, to effect certain amendments to the Constitution, the ratification of half of the states is also required. In Britain, on the other hand, the Constitution is neither written nor there is anything like a fundamental law of the land.

[31] The then law minister gave the following reason for dropping reference to the British House of Commons: "That the original provision—there was no escape from it—had referred to the British House of Commons. Now a proud country like India would like to avoid making any reference to a foreign institution in its own solemn constitutional document. Therefore, this verbal change is being introduced so that there may not be any reference to a foreign institution."

[32] A.V. Dicey: *Introduction to the Study of the Law of the Constitution,* Macmillan, 1965 Edition, pp. 39–40.

2. Federal System of Government

India has a federal system of government with a constitutional division of powers between the Union and the states. Both have to operate within the spheres allotted to them. Hence, the law-making authority of the Parliament gets confined to the subjects enumerated in the Union List and Concurrent List and does not extend to the subjects enumerated in the State List (except in five abnormal circumstances and that too for a short period). Britain, on the other hand, has a unitary system of government and hence, all the powers are vested in the Centre.

3. System of Judicial Review

The adoption of an independent Judiciary with the power of judicial review also restricts the supremacy of our Parliament. Both the Supreme Court and high courts can declare the laws enacted by the Parliament as void and *ultra vires* (unconstitutional), if they contravene any provision of the Constitution. On the other hand, there is no system of judicial review in Britain. The British Courts have to apply the Parliamentary laws to specific cases, without examining their constitutionality, legality or reasonableness.

4. Fundamental Rights

The authority of the Parliament is also restricted by the incorporation of a code of justiciable fundamental rights under Part III of the Constitution. Article 13 prohibits the State from making a law that either takes away totally or abrogates in part a fundamental right. Hence, a Parliamentary law that contravenes the fundamental rights shall be void. In Britain, on the other hand, there is no codification of justiciable fundamental rights in the Constitution. The British Parliament has also not made any law that lays down the fundamental rights of the citizens. However, it does not mean that the British citizens do not have rights. Though there is no charter guaranteeing rights, there is maximum liberty in Britain due to the existence of the Rule of Law.

Therefore, even though the nomenclature and organisational pattern of our Parliament is similar to that of the British Parliament, there is a substantial difference between the two. The Indian Parliament is not a sovereign body in the sense in which the British Parliament is a sovereign body. Unlike the British Parliament, the authority and jurisdiction of the Indian Parliament are defined, limited and restrained.

In this regard, the Indian Parliament is similar to the American Legislature (known as Congress). In USA also, the sovereignty of Congress is legally restricted by the written character of the Constitution, the federal system of government, the system of judicial review and the Bill of Rights.

Table 23.5 Allocation of Seats in Parliament for States and Union Territories and seats reserved for SCs and STs in the Lok Sabha

S.No.	States/UTs	No. of Seats in Rajya Sabha	No. of Seats in Lok Sabha	Reserved for the Scheduled Castes	Reserved for the Scheduled Tribes
	I. States				
1.	Andhra Pradesh	11	25	4	1
2.	Arunachal Pradesh	1	2	—	—
3.	Assam	7	14	1	2
4.	Bihar	16	40	6	—
5.	Chhattisgarh	5	11	1	4

S.No.	States/UTs	No. of Seats in Rajya Sabha	No. of Seats in Lok Sabha	Reserved for the Scheduled Castes	Reserved for the Scheduled Tribes
6.	Goa	1	2	—	—
7.	Gujarat	11	26	2	4
8.	Haryana	5	10	2	—
9.	Himachal Pradesh	3	4	1	—
10.	Jharkhand	6	14	1	5
11.	Karnataka	12	28	5	2
12.	Kerala	9	20	2	—
13.	Madhya Pradesh	11	29	4	6
14.	Maharashtra	19	48	5	4
15.	Manipur	1	2	—	1
16.	Meghalaya	1	2	—	2
17.	Mizoram	1	1	—	1
18.	Nagaland	1	1	—	—
19.	Odisha	10	21	3	5
20.	Punjab	7	13	4	—
21.	Rajasthan	10	25	4	3
22.	Sikkim	1	1	—	—
23.	Tamil Nadu	18	39	7	—
24.	Telangana	7	17	3	2
25.	Tripura	1	2	—	1
26.	Uttarakhand	3	5	1	—
27.	Uttar Pradesh	31	80	17	—
28.	West Bengal	16	42	10	2
	II. Union Territories				
1.	Andaman and Nicobar Islands	—	1	—	—
2.	Chandigarh	—	1	—	—
3.	Dadra and Nagar Haveli and Daman and Diu	—	2	—	1
4.	Delhi (The National Capital Territory of Delhi)	3	7	1	—
5.	Lakshadweep	—	1	—	1
6.	Puducherry	1	1	—	—
7.	Jammu and Kashmir	4	5	—	—
8	Ladakh	—	1	—	—
	III. Nominated members	12	—		
	Total	245	543	84	47

Table 23.6 Durations of the Lok Sabha (from First Lok Sabha to Present Lok Sabha)

Lok Sabha	Duration	Remarks
First	1952–1957	Dissolved 38 days before expiry of its term.
Second	1957–1962	Dissolved 40 days before expiry of its term.
Third	1962–1967	Dissolved 44 days before expiry of its term.
Fourth	1967–1970	Dissolved one year and 79 days before expiry of its term.
Fifth	1971–1977	Term of the Lok Sabha was extended two times by one year at a time. However, the House was dissolved after having been in existence for a period of five years, 10 months and six days.
Sixth	1977–1979	Dissolved after having been in existence for a period of two years, four months and 28 days.
Seventh	1980–1984	Dissolved 20 days before expiry of its term.
Eighth	1985–1989	Dissolved 48 days before expiry of its term.
Ninth	1989–1991	Dissolved after having been in existence for a period of one year, two months and 25 days.
Tenth	1991–1996	—
Eleventh	1996–1997	Dissolved after having been in existence for a period of one year, six months and 13 days.
Twelfth	1998–1999	Dissolved after having been in existence for a period of one year, one month and four days.
Thirteenth	1999–2004	Dissolved 253 days before expiry of its term.
Fourteenth	2004–2009	—
Fifteenth	2009–2014	—
Sixteenth	2014–2019	—
Seventeenth	2019–Continuing	—

Table 23.7 Speakers of the Lok Sabha (from First Lok Sabha to Present Lok Sabha)

Lok Sabha	Name	Tenure (Remarks)
First	1. Ganesh Vasudev Mavalanker	1952 to 1956 (Died)
	2. Ananthasayanam Ayyangar	1956 to 1957
Second	Ananthasayanam Ayyangar	1957 to 1962
Third	Hukum Singh	1962 to 1967
Fourth	1. Neelam Sanjiva Reddy	1967 to 1969 (Resigned)
	2. Gurdial Singh Dhillan	1969 to 1971
Fifth	1. Gurdial Singh Dhillan	1971 to 1975 (Resigned)
	2. Bali Ram Bhagat	1976 to 1977

Lok Sabha	Name	Tenure (Remarks)
Sixth	1. Neelam Sanjiva Reddy	1977 to 1977 (Resigned)
	2. K.S. Hegde	1977 to 1980
Seventh	Balram Jakhar	1980 to 1985
Eighth	Balram Jakhar	1985 to 1989
Ninth	Rabi Ray	1989 to 1991
Tenth	Shivraj Patil	1991 to 1996
Eleventh	P.A. Sangma	1996 to 1998
Twelfth	G.M.C. Balayogi	1998 to 1999
Thirteenth	1. G.M.C. Balayogi	1999 to 2002 (Died)
	2. Manohar Joshi	2002 to 2004
Fourteenth	Somnath Chatterjee	2004 to 2009
Fifteenth	Ms. Meira Kumar	2009 – 2014
Sixteenth	Ms. Sumitra Mahajan	2014 – 2019
Seventeenth	Om Birla	2019 – till date

Table 23.8 Articles Related to Parliament at a Glance

Article No.	Subject Matter
	General
79.	Constitution of Parliament
80.	Composition of the Council of States
81.	Composition of the House of the People
82.	Readjustment after each census
83.	Duration of Houses of Parliament
84.	Qualification for membership of Parliament
85.	Sessions of Parliament, prorogation and dissolution
86.	Right of President to address and send messages to Houses
87.	Special address by the President
88.	Rights of Ministers and Attorney-General as respects Houses
	Officers of Parliament
89.	The Chairman and Deputy Chairman of the Council of States
90.	Vacation and resignation of, and removal from, the office of Deputy Chairman

(Contd.)

Article No.	Subject Matter
91.	Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman
92.	The Chairman or the Deputy Chairman not to preside while a resolution for his/her removal from office is under consideration
93.	The Speaker and Deputy Speaker of the House of the People
94.	Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker
95.	Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker
96.	The Speaker or the Deputy Speaker not to preside while a resolution for his/her removal from office is under consideration
97.	Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker
98.	Secretariat of Parliament
	Conduct of Business
99.	Oath or affirmation by members
100.	Voting in Houses, power of Houses to act notwithstanding vacancies and quorum
	Disqualifications of Members
101.	Vacation of seats
102.	Disqualifications for membership
103.	Decision on questions as to disqualifications of members
104.	Penalty for sitting and voting before making oath or affirmation under Article 99 or when not qualified or when disqualified
	Powers, Privileges and Immunities of Parliament and its Members
105.	Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof
106.	Salaries and allowances of members
	Legislative Procedure
107.	Provisions as to introduction and passing of Bills
108.	Joint sitting of both Houses in certain cases
109.	Special procedure in respect of Money Bills
110.	Definition of "Money Bills"
111.	Assent to Bills
	Procedures in Financial Matters
112.	Annual financial statement
113.	Procedure in Parliament with respect to estimates

Article No.	Subject Matter
114.	Appropriation Bills
115.	Supplementary, additional or excess grants
116.	Votes on account, votes of credit and exceptional grants
117.	Special provisions as to financial Bills
	Procedure Generally
118.	Rules of procedure
119.	Regulation by law of procedure in Parliament in relation to financial business
120.	Language to be used in Parliament
121.	Restriction on discussion in Parliament
122.	Courts not to inquire into proceedings of Parliament
	Legislative Powers of the President
123.	Power of President to promulgate Ordinances during recess of Parliament

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CHAPTER 24 Parliamentary Committees

MEANING

The Parliament is too unwieldy a body to deliberate effectively the issues that come up before it. The functions of the Parliament are varied, complex and voluminous. Moreover, it neither has adequate time nor necessary expertise to make a detailed scrutiny of all legislative measures and other matters. Therefore, it is assisted by a number of committees in the discharge of its duties.

The Constitution of India makes a mention of these committees at different places, but without making any specific provisions regarding their composition, tenure, functions, etc. All these matters are dealt by the rules of two Houses. Accordingly, a parliamentary committee means a committee that:

1. is appointed or elected by the House or nominated by the Speaker/Chairman
2. works under the direction of the Speaker/Chairman
3. presents its report to the House or to the Speaker/Chairman
4. has a secretariat provided by the Lok Sabha/Rajya Sabha

The consultative committees, which also consist of members of Parliament, are not parliamentary committees as they do not fulfil above four conditions.

CLASSIFICATION

Broadly, parliamentary committees are of two kinds—Standing Committees and *Ad Hoc* Committees. The former are permanent (constituted every year or periodically) and work on a continuous basis, while the latter are temporary and cease to exist on completion of the task assigned to them.

Standing Committees

On the basis of the nature of functions performed by them, standing committees can be classified into the following six categories:

1. Financial Committees

(a) Public Accounts Committee
(b) Estimates Committee
(c) Committee on Public Undertakings

2. Department-Related Standing Committees (24)

3. Committees to Inquire

(a) Committee on Petitions
(b) Committee of Privileges
(c) Ethics Committee

4. Committees to Scrutinise and Control

(a) Committee on Government Assurances
(b) Committee on Subordinate Legislation
(c) Committee on Papers Laid on the Table
(d) Committee on Welfare of SCs and STs
(e) Committee on Empowerment of Women
(f) Joint Committee[1] on Offices of Profit

5. Committees Relating to the Day-to-Day Business of the House

(a) Business Advisory Committee
(b) Committee on Private Members' Bills and Resolutions

[1] A joint committee consists of members of both the Houses of Parliament.

(c) Rules Committee
(d) Committee on Absence of Members from the Sittings of the House

6. House-Keeping Committees or Service Committees (i.e., Committees concerned with the Provision of Facilities and Services to Members):

(a) General Purposes Committee
(b) House Committee
(c) Library Committee
(d) Joint Committee on Salaries and Allowances of Members of Parliament

Ad Hoc Committees

Ad hoc committees can be divided into two categories, that is, Inquiry Committees and Advisory Committees.

1. Inquiry Committees are constituted from time to time, either by the two Houses on a motion adopted in that behalf, or by the Speaker/Chairman, to inquire into and report on specific subjects. For example:
   (a) Railway Convention Committee[2]
   (b) Committee on Members of Parliament Local Area Development Scheme (MPLADS)
   (c) Joint Committee on Security in Parliament Complex
   (d) Committee on Provision of Computers to Members of Parliament, Offices of Political Parties and Officers of the Lok Sabha Secretariat
   (e) Committee on Food Management in Parliament House Complex
   (f) Committee on Installation of Portraits/Statues of National Leaders and Parliamentarians in Parliament House Complex
   (g) Joint Committee on Maintenance of Heritage Character and Development of Parliament House Complex
   (h) Committee on Violation of Protocol Norms and Contemptuous Behaviour of Government Officers with Members of Lok Sabha
   (i) Committee on Welfare of Other Backward Classes
   (j) Committee to Inquire into the Improper Conduct of a Member
2. Advisory Committees include select or joint committees on bills, which are appointed to consider and report on particular bills. These committees are distinguishable from the other *ad hoc* committees in as much as they are concerned with bills and the procedure to be followed by them is laid down in the Rules of Procedure and the Directions by the Speaker/Chairman.

When a Bill comes up before a House for general discussion, it is open to that House to refer it to a Select Committee of the House or a Joint Committee of the two Houses. A motion to this effect has to be moved and adopted in the House in which the Bill comes up for consideration. In case the motion adopted is for reference of the Bill to a Joint Committee, the decision is conveyed to the other House, requesting the members to nominate members of the other House to serve on the Committee.

The Select or Joint Committee considers the Bill clause by clause just as the two Houses do. Amendments to various clauses can be moved by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the Bill. After the Bill has thus been considered, the Committee submits its report to the House. Members who do not agree with the majority report may append their minutes of dissent to the report.

FINANCIAL COMMITTEES

Public Accounts Committee

This committee was set up first in 1921 under the provisions of the Government of India Act

[2]The Railway Convention Committee, 1949 was the first Committee after independence. This Committee and subsequent Committees confined themselves to determining the Rate of Dividend payable by the Railways to General Revenues. Since 1971, the Railway Convention Committees have been taking up subjects which have a bearing on the working of the Railways and Railway Finances.

of 1919 and has since been in existence. At present, it consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha). The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of the single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed from amongst its members by the Speaker. Until 1966 – '67, the chairman of the committee belonged to the ruling party. However, since 1967 a convention has developed whereby the chairman of the committee is selected from the Opposition.

The function of the committee is to examine the annual audit reports of the Comptroller and Auditor General of India (CAG), which are laid before the Parliament by the President. The CAG submits three audit reports to the President, namely, audit report on appropriation accounts, audit report on finance accounts and audit report on public undertakings.

The committee examines public expenditure not only from legal and formal point of view to discover technical irregularities but also from the point of view of economy, prudence, wisdom and propriety to bring out the cases of waste, loss, corruption, extravagance, inefficiency and nugatory expenses.

In more detail, the functions of the committee are:

1. To examine the appropriation accounts and the finance accounts of the Union government and any other accounts laid before the Lok Sabha. The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the *Appropriation Act*, while the finance accounts shows the annual receipts and disbursements of the Union Government.
2. In scrutinising the appropriation accounts and the audit report of CAG on it, the committee has to satisfy itself that
   (a) The money that has been disbursed was legally available for the applied service or purpose
   (b) The expenditure conforms to the authority that governs it
   (c) Every re-appropriation has been made in accordance with the related rules
3. To examine the accounts of state corporations, trading concerns and manufacturing projects and the audit report of CAG on them (except those public undertakings which are allotted to the Committee on Public Undertakings)
4. To examine the accounts of autonomous and semi-autonomous bodies, the audit of which is conducted by the CAG
5. To consider the report of the CAG relating to the audit of any receipt or to examine the accounts of stores and stocks
6. To examine the money spent on any service during a financial year in excess of the amount granted by the Lok Sabha for that purpose

In the fulfillment of the above functions, the committee is assisted by the CAG. In fact, the CAG acts as a guide, friend and philosopher of the committee.

On the role played by the committee, Ashok Chanda (who himself has been a CAG of India) observed: "Over a period of years, the committee has entirely fulfilled the expectation that it should develop into a powerful force in the control of public expenditure. It may be claimed that the traditions established and conventions developed by the Public Accounts Committee conform to the highest traditions of a parliamentary democracy."[3]

However, the effectiveness of the role of the committee is limited by the following:

(a) It is not concerned with the questions of policy in broader sense.
(b) It conducts a post-mortem examination of accounts (showing the expenditure already incurred).
(c) It cannot intervene in the matters of day-to-day administration.
(d) Its recommendations are advisory and not binding on the ministries.
(e) It is not vested with the power of disallowance of expenditures by the departments.

[3]Ashok Chanda: *Indian Administration*, George Allen & Unwin Ltd, London, 1967, p. 180.

(f) It is not an executive body and hence, cannot issue an order. Only the Parliament can take a final decision on its findings.

Estimates Committee

The origin of this committee can be traced to the standing financial committee set up in 1921. The first Estimates Committee in the post-independence era was constituted in 1950 on the recommendation of John Mathai, the then finance minister. Originally, it had 25 members but in 1956 its membership was raised to 30. All the thirty members are from Lok Sabha only. The Rajya Sabha has no representation in this committee. These members are elected by the Lok Sabha every year from amongst its own members, according to the principles of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office is one year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed by the Speaker amongst its members and he/she is generally from the ruling party.

The function of the committee is to examine the estimates included in the budget and suggest 'economies' in public expenditure. Hence, it has been described as a 'continuous economy committee'.

In more detail, the functions of the committee are:

1. To report what economies, improvements in organisation, efficiency and administrative reform consistent with the policy underlying the estimates, can be affected
2. To suggest alternative policies in order to bring about efficiency and economy in administration
3. To examine whether the money is well laid out within the limits of the policy implied in the estimates
4. To suggest the form in which the estimates are to be presented to Parliament

The Committee shall not exercise its functions in relation to such public undertakings as are allotted to the Committee on Public Undertakings.

The Committee may continue the examination of the estimates from time to time, throughout the financial year and report to the House as its examination proceeds. It shall not be incumbent on the Committee to examine the entire estimates of any one year. The demands for grants may be finally voted despite the fact that the Committee has made no report.

However, the effectiveness of the role of the committee is limited by the following:

(a) It examines the budget estimates only after they have been voted by the Parliament, and not before that.
(b) It cannot question the policy laid down by the Parliament.
(c) Its recommendations are advisory and not binding on the ministries.
(d) It examines every year only certain selected ministries and departments. Thus, by rotation, it would cover all of them over a number of years.
(e) It lacks the expert assistance of the CAG which is available to the Public Accounts Committee.
(f) Its work is in the nature of a postmortem.

Committee on Public Undertakings

This committee was created in 1964 on the recommendation of the Krishna Menon Committee. Originally, it had 15 members (10 from the Lok Sabha and 5 from the Rajya Sabha). However, in 1974, its membership was raised to 22 (15 from the Lok Sabha and 7 from the Rajya Sabha). The members of this committee are elected by the Parliament every year from amongst its own members according to the principle of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed by the Speaker from amongst its members.

The functions of the committee are:

1. To examine the reports and accounts of public undertakings

2. To examine the reports of the Comptroller and Auditor General on public undertakings
3. To examine (in the context of autonomy and efficiency of public undertakings) whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices
4. To exercise such other functions vested in the public accounts committee and the estimates committee in relation to public undertakings which are allotted to it by the Speaker from time to time

The committee is not to examine and investigate any of the following:

(i) Matters of major government policy as distinct from business or commercial functions of the public undertakings
(ii) Matters of day-to-day administration
(iii) Matters for the consideration of which machinery is established by any special statute under which a particular public undertaking is established

Further, the effectiveness of the role of the committee is limited by the following:

(a) It cannot take up the examination of more than ten to twelve public undertakings in a year.
(b) Its work is in the nature of a post-mortem.
(c) It does not look into technical matters as its members are not technical experts.
(d) Its recommendations are advisory and not binding on the ministries.

DEPARTMENT-RELATED STANDING COMMITTEES

On the recommendation of the Rules Committee of the Lok Sabha, 17 Department-Related Standing Committees (DRSCs) were set up in the Parliament in 1993.[4] In 2004, seven more such committees were setup, thus increasing their number from 17 to 24.

The main objective of the DRSCs is to secure more accountability of the Executive (i.e., the Council of Ministers) to the Parliament, particularly financial accountability. They also assist the Parliament in debating the budget more effectively.[5] The 24 DRSCs cover under their jurisdiction all the ministries/departments of the Central Government.

Each DRSC consists of 31 members (21 from Lok Sabha and 10 from Rajya Sabha). The members of the Lok Sabha are nominated by the Speaker from amongst its own members, just as the members of the Rajya Sabha are nominated by the Chairman from amongst its members.[6] A minister is not eligible to be nominated as a member of any of the DRSCs. In case a member, after his/her nomination to any of the DRSCs, is appointed a minister, he/she then ceases to be a member of the committee. The term of office of each DRSC is one year from the date of its constitution.

Out of the 24 DRSCs, 8 work under the Rajya Sabha and 16 under the Lok Sabha. The 24 DRSCs and the ministries/departments placed under their jurisdiction are shown below in Table 24.1.

The functions of each of the DRSCs are:

1. To consider the demands for grants of the concerned ministries/departments before they are discussed and voted in the LokSabha. Its report should not

[4]In 1989, three DRSCs were constituted which dealt with Agriculture, Science & Technology and Environment & Forests. In 1993, they were superseded by the Department-Related Standing Committees (DRSCs).

[5]While inaugurating the DRSC system in the Central Hall of Parliament on 31st March 1993, the then Vice-President of India and the Chairman of Rajya Sabha, K.R. Narayanan observed that the main purpose of these Committees is: "to ensure the accountability of Government to Parliament through more detailed consideration of measures in these Committees. The intention is not to weaken or criticise the administration but to strengthen it by investing it with more meaningful Parliamentary support".

[6]Till 13th Lok Sabha, each DRSC consisted of not more than 45 members – 30 to be nominated by the Speaker from amongst the members of Lok Sabha and 15 to be nominated by the Chairman from amongst the members of Rajya Sabha. However, with restructuring of DRSCs in July 2004, each DRSC consists of 31 members – 21 from Lok Sabha and 10 from Rajya Sabha.

Table 24.1 Department-Related Standing Committees and their Jurisdiction

Sl. No.	Name of the Committees	Ministries/Departments Covered
I.	**Committees under Rajya Sabha**	
1.	Committee on Commerce	Commerce and Industry
2.	Committee on Home Affairs	(1) Home Affairs (2) Development of North-Eastern Region
3.	Committee on Education, Women, Children, Youth and Sports	(1) Education (2) Youth Affairs and Sports (3) Women and Child Development
4.	Committee on Industry	(1) Heavy Industries (2) Micro, Small and Medium Enterprises
5.	Committee on Science & Technology, Environment, Forest and Climate change	(1) Science and Technology (2) Space (3) Earth Sciences (4) Atomic Energy (5) Environment, Forest and Climate Change
6.	Committee on Transport, Tourism and Culture	(1) Civil Aviation (2) Road Transport & Highways (3) Ports, Shipping and Waterways (4) Culture (5) Tourism
7.	Committee on Health & Family Welfare	(1) Health and Family Welfare (2) Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH)
8.	Committee on Personnel, Public Grievances, Law and Justice	(1) Law and Justice (2) Personnel, Public Grievances and Pensions
II.	**Committees under Lok Sabha**	
9.	Committee on Agriculture, Animal Husbandry and Food Processing	(1) Agriculture and Farmers' Welfare (2) Fisheries, Animal Husbandry and Dairing (3) Food Processing Industries (4) Cooperation
10.	Committee on Communications and Information Technology	(1) Communications (2) Electronics & Information Technology (3) Information & Broadcasting
11.	Committee on Defence	Defence
12.	Committee on Energy	(1) New and Renewable Energy (2) Power
13.	Committee on External Affairs	External Affairs
14.	Committee on Finance	(1) Finance (2) Corporate Affairs (3) Planning (NITI Aayog) (4) Statistics and Programme Implementation
15.	Committee on Consumer Affairs, Food and Public Distribution	Consumer Affairs, Food and Public Distribution

Sl. No.	Name of the Committees	Ministries/Departments Covered
16.	Committee on Labour, Textiles and Skill Development	(1) Labour & Employment (2) Textiles (3) Skill Development & Entrepreneurship
17.	Committee on Petroleum and Natural Gas	Petroleum and Natural Gas
18.	Committee on Railways	Railways
19.	Committee on Housing and Urban Affairs	Housing and Urban Affairs
20.	Committee on Water Resources	Jal Shakti
21.	Committee on Chemicals and Fertilizers	Chemicals and Fertilizers
22.	Committee on Rural Development and Panchayati Raj	(1) Rural Development (2) Panchayati Raj
23.	Committee on Coal, Mines and Steel	(1) Coal (2) Mines (3) Steel
24.	Committee on Social Justice and Empowerment	(1) Social Justice and Empowerment (2) Tribal Affairs (3) Minority Affairs

suggest anything of the nature of cut motions

2. To examine bills pertaining to the concerned ministries/departments
3. To consider annual reports of ministries/departments
4. To consider national basic long-term policy documents presented to the Houses

The following limitations are imposed on the functioning of these DRSCs:

(i) They should not consider the matters of day-to-day administration of the concerned ministries/departments.

(ii) They should not generally consider the matters which are considered by other parliamentary committees.

It should be noted here that the recommendations of these committees are advisory in nature and hence not binding on the Parliament.

The following procedure shall be followed by each of the DRSCs in their consideration of the demands for grants, and making a report thereon to the Houses.

(a) After general discussion on the budget in the Houses is over, the Houses shall be adjourned for a fixed period.

(b) The committees shall consider the demands for grants of the concerned ministries during the aforesaid period.

(c) The committees shall make their report within the period and shall not ask for more time.

(d) The demands for grants shall be considered by the House in the light of the reports of the committees.

(e) There shall be a separate report on the demands for grants of each ministry.

The following procedure shall be followed by each of the DRSCs in examining the bills and making report thereon.

(a) The committee shall consider the general principles and clauses of bills referred to it.

(b) The Committee shall consider only such bills as introduced in either of the Houses and referred to it.

(c) The Committee shall make report on bills in a given time.

The merits of the DRSC system in the Parliament are:

(1) Their proceedings are devoid of any party bias.

(2) The procedure adopted by them is more flexible than in the Lok Sabha.
(3) The system makes parliamentary control over executive much more detailed, close, continuous, in-depth and comprehensive.
(4) The system ensures economy and efficiency in public expenditure as the ministries/departments would now be more careful in formulating their demands.
(5) They facilitate opportunities to all the members of Parliament to participate and understand the functioning of the government and contribute to it.
(6) They can avail of expert opinion or public opinion to make the reports. They are authorised to invite experts and eminent persons to testify before them and incorporate their opinions in their reports.
(7) The opposition parties and the Rajya Sabha can now play a greater role in exercising financial control over the executive.

The DRSC system has influenced the functioning of the executive in a significant manner. The recommendations made by the DRSCs have been of immense importance. It has been found that the ministries/department within the purview of these committees have been quite receptive to their recommendations and have, by and large, accepted them and initiated suitable action for their implementation. There have been very few instances where the ministries/departments have convincingly expressed their inability to implement the recommendations of the committees[7].

The DRSCs have made parliamentary debates better informed by nourishing the information supply system. The effectiveness of these committees can be judged on four yardsticks, namely, (i) their success in holding officials to account, (ii) publication of information, (iii) their effect on the House and the wider public, and (iv) their influence on government's decisions. Going by any of the criteria, one can emphatically say that DRSCs have proved their worth. The activities of these committees have created a "corpus of knowledge" for members of the Parliament and public, which otherwise would not have been possible. The discussion and debates in such committees and the reports they produce further sharpen government policies[8].

COMMITTEES TO INQUIRE

Committee on Petitions

This committee examines petitions on bills and on matters of general public importance. It also entertains representations from individuals and associations on matters pertaining to Union subjects. The Lok Sabha committee consists of 15 members, while the Rajya Sabha committee consists of 10 members.

Committee of Privileges

The functions of this committee are semi-judicial in nature. It examines the cases of breach of privileges of the House and its members and recommends appropriate action. The Lok Sabha committee has 15 members, while the Rajya Sabha committee has 10 members.

Ethics Committee

This committee was constituted in Rajya Sabha in 1997 and in Lok Sabha in 2000. It enforces the code of conduct of members of Parliament. It examines the cases of misconduct and recommends appropriate action. Thus, it is engaged in maintaining discipline and decorum in Parliament. The Lok Sabha committee has 15 members, while the Rajya Sabha committees has 10 members.

[7] Committee System in Rajya Sabha: An Introduction, Rajya Sabha Secretariat, 2003, pp. 29–30.

[8] *Ibid.*

COMMITTEES TO SCRUTINISE AND CONTROL

Committee on Government Assurances

This committee examines the assurances, promises and undertakings given by ministers from time to time on the floor of the House and reports on the extent to which they have been carried through. In the Lok Sabha, it consists of 15 members and in the Rajya Sabha, it consists of 10 members. It was constituted in 1953.

Committee on Subordinate Legislation

This committee examines and reports to the House whether the powers to make regulations, rules, sub-rules and bye-laws delegated by the Parliament or conferred by the Constitution to the Executive are being properly exercised by it. In both the Houses, the committee consists of 15 members. It was constituted in 1953.

Committee on Papers Laid on the Table

This committee was constituted in 1975. The Lok Sabha Committee has 15 members, while the Rajya Sabha Committee has 10 members. It examines all papers laid on the table of the House by ministers to see whether they comply with provisions of the Constitution, or the related Act or Rule. It does not examine statutory notifications and orders that fall under the jurisdiction of the Committee on Subordinate Legislation.

Committee on Welfare of SCs and STs

This committee consists of 30 members (20 from Lok Sabha and 10 from Rajya Sabha). Its functions are: (i) to consider the reports of the National Commission for the SCs and the National Commission for the STs; (ii) to examine all matters relating to the welfare of SCs and STs, like implementation of constitutional and statutory safeguards, working of welfare programmes, etc.

Committee on Empowerment of Women

This committee was constituted in 1997 and consists of 30 members (20 from Lok Sabha and 10 from Rajya Sabha). It considers the reports of the National Commission for Women and examines the measures taken by the Union Government to secure status, dignity and equality for women in all fields.

Joint Committee on Offices of Profit

This committee examines the composition and character of committees and other bodies appointed by the Central, state and union territory governments and recommends whether persons holding these offices should be disqualified from being elected as members of Parliament or not. It consists of 15 members (10 from Lok Sabha and 5 from Rajya Sabha).

COMMITTEES RELATING TO THE DAY-TO-DAY BUSINESS OF THE HOUSE

Business Advisory Committee

This committee regulates the programme and time table of the House. It allocates time for the transaction of legislative and other business brought before the House by the government. The Lok Sabha committee consists of 15 members including the Speaker as its chairman. In the Rajya Sabha, it has 11 members including the Chairman as its ex-officio chairman.

Committee on Private Members' Bills and Resolutions

This committee classifies bills and allocates time for the discussion on bills and resolutions introduced by private members (other than ministers). This is a special committee of the Lok Sabha and consists of 15 members including the Deputy Speaker as its chairman. The Rajya Sabha does not have any such committee. The same function in the Rajya

Sabha is performed by the Business Advisory Committee of that House.

Rules Committee

This committee considers the matters of procedure and conduct of business in the House and recommends necessary amendments or additions to the rules of the House. The Lok Sabha committee consists of 15 members including the Speaker as its ex-officio chairman. In the Rajya Sabha, it consists of 16 members including the Chairman as its ex-officio chairman.

Committee on Absence of Members from the Sittings of the House

This committee considers all applications from members for leave of absence from the sittings of the House, and examines the cases of members who have been absent for a period of 60 days or more without permission. It is a special committee of the Lok Sabha and consists of 15 members. There is no such committee in the Rajya Sabha and all such matters are dealt by the House itself.

HOUSE-KEEPING COMMITTEES

General Purposes Committee

This committee considers and advises on matters concerning affairs of the House, which do not fall within the jurisdiction of any other parliamentary committee. In each House, this committee consists of the presiding officer (Speaker/Chairman) as its ex-officio chairman, Deputy Speaker (Deputy Chairman in the case of Rajya Sabha), members of panel of chairpersons (panel of vice-chairpersons in the case of Rajya Sabha), chairpersons of all the departmental standing committees of the House, leaders of recognised parties and groups in the House and such other members as nominated by the presiding officer.

House Committee

This committee deals with residential accommodation of members and other amenities like food, medical aid, etc., accorded to them in their houses and hostels in Delhi. Both the Houses have their respective House Committees. In the Lok Sabha, it consists of 12 members. In the Rajya Sabha, it consists of 10 members.

Library Committee

This committee considers all matters relating to library of the Parliament and assists the members in utilising the library's services. It consists of 9 members (6 from Lok Sabha and 3 from Rajya Sabha).

Joint Committee on Salaries and Allowances of Members of Parliament

This committee was constituted under the Salary, Allowances and Pension of Members of Parliament Act, 1954. It consists of 15 members (10 from Lok Sabha and 5 from Rajya Sabha). It frames rules for regulating payment of salary, allowances and pension to members of Parliament.

CONSULTATIVE COMMITTEES

Consultative committees are attached to various ministries/departments of the Central Government. They consist of members of both the Houses of Parliament. The Minister/Minister of State in charge of the Ministry concerned acts as the chairman of the consultative committee of that ministry.

These committees provide a forum for informal discussions between the ministers and the members of Parliament on policies and programmes of the government and the manner of their implementation.

These committees are constituted by the Ministry of Parliamentary Affairs. The guidelines regarding the composition, functions and procedures of these committees are formulated by this Ministry. The Ministry also makes arrangements for holding their meetings both during the session and the inter-session period of Parliament.

The membership of these committees is voluntary and is left to the choice of the members and the leaders of their parties. The maximum membership of a committee is 30 and the minimum is 10.

These committees are constituted after a new Lok Sabha is constituted, after General Elections for the Lok Sabha. In other words, these committees shall stand dissolved upon dissolution of every Lok Sabha and shall be reconstituted upon constitution of each Lok Sabha.

In addition, separate Informal Consultative Committees of the members of Parliament are also constituted for all the Railway Zones. The members of Parliament belonging to the area falling under a particular Railway Zone are nominated on the Informal Consultative Committee of that Railway Zone.

CHAPTER 25 Indian Parliamentary Group

RATIONALE OF THE IPG

M.N. Kaul and S.L. Shakdher have nicely explained the rationale of the Indian Parliamentary Group (IPG) in the following way:

The establishment and development of relations among parliaments constitutes part of the regular activities of national parliaments. Although promotion of inter-parliamentary relations has for many years been a significant part of the work of parliamentarians, recently it has received a new thrust due to the increased inter-dependence of nations in a global environment. It is imperative that parliamentarians will join hands to safeguard democracy and work in synergy to confront the challenges before the world and convert them into opportunities to facilitate peace and prosperity in their countries as well as globally.[1]

Inter-parliamentary relations thus assume great importance today when the whole world is beset with many pressing problems. The problems that are faced by one parliament today may confront another tomorrow. It is, therefore, essential that a link should exist between various parliaments of the world. This link is maintained by India through the exchange of delegations, goodwill missions, correspondence, documents, etc. with foreign parliaments through the machinery of the IPG that acts both as the National Group of the Inter-Parliamentary Union (IPU) and also as the India Branch of the Commonwealth Parliamentary Association (CPA).[2]

[1]M.N. Kaul and S.L. Shakdher, *Practice and Procedure of Parliament, Lok Sabha Secretariat*, Sixth Edition, 2009, p. 1160.

[2]Ibid.

COMPOSITION OF THE IPG

The IPG is an autonomous body. It was formed in the year 1949 in pursuance of a motion adopted by the Constituent Assembly (Legislative).[3]

The membership of IPG is open to all members of Parliament. The former members of Parliament can also become associate members of the IPG.[4] But, the associate members are entitled to limited rights only. They are not entitled to representation at meetings and conferences of the IPU and the CPA. They are also not entitled to the travel concessions provided to members by certain branches of the CPA.

The Speaker of the Lok Sabha is the *ex officio* President of the IPG. The Deputy Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha are the *ex officio* vice-presidents of the IPG. The Secretary-General of the Lok Sabha acts as the *ex officio* Secretary-General of the IPG.

OBJECTIVES OF THE IPG

The aims and objects of the IPG are mentioned below:

1. To promote personal contact between members of the Parliament of India.
2. To study questions of public importance that are likely to come up before the Parliament; arrange seminars,

[3]The concerned motion was adopted on August 16, 1948.

[4]A member or ex-member of Parliament can become a life member of the IPG on payment of a fixed life subscription.

discussions and orientation courses; and bring out publications for the dissemination of information to the members of the IPG.

3. To arrange lectures on political, defence, economic, social and educational problems by the members of the Parliament and distinguished persons.
4. To arrange visits to foreign countries with a view to develop contacts with members of other parliaments.

FUNCTIONS OF THE IPG

The various functions performed and activities undertaken by the IPG are as follows:

1. The IPG acts as a link between the Parliament of India and the various parliaments of the world. This link is maintained through the exchange of delegations, goodwill missions, correspondence, documents, etc. with foreign parliaments.
2. The IPG functions as the (a) National Group of the IPU and (b) main branch of the CPA in India.
3. Addresses to the members of the Parliament by visiting Heads of State and Government of foreign countries and talks by eminent persons are arranged under the auspices of the IPG.
4. Seminars and symposia on parliamentary subjects of topical interest are organised periodically at national as well as international level.
5. Members of the IPG, when visiting abroad, are given letters of introduction to the Secretaries of the National Groups of the IPU and Secretaries of the CPA branches. The Indian Missions in the countries of visit are also suitably informed so as to enable them to get assistance and usual courtesies.
6. Only those members of the Parliament who are members of the IPG of at least six months' standing at the time of the composition of the delegation, may be included in the Indian Parliamentary delegations to foreign countries.
7. An uninterrupted flow of information to members regarding the activities of the IPG is maintained through the IPG Newsletter brought out every quarter. It is sent regularly to all members of the IPG, including associate members.
8. As per the decision of the IPG, an award of Outstanding Parliamentarian was instituted in the year 1995 to be given annually. A committee of five persons, constituted by the Speaker of the Lok Sabha, invites and finalises the nomination for the award.

PARLIAMENTARY FRIENDSHIP GROUPS

To encourage bilateral relations, the IPG constitutes Parliamentary Friendship Groups (PFGs) with other countries, in the Indian Parliament.

Each PFG consists of sitting members of Parliament (both from the Lok Sabha and the Rajya Sabha). The Speaker of the Lok Sabha appoints the President of each PFG.

The management and control of all affairs of the PFGs vests in the IPG. The meetings of the PFGs are arranged on the sidelines of visiting Foreign Parliamentary Friendship Groups/ Committees/Delegations. These meetings are held within the Parliament House complex.

The aims and objectives of the PFGs are mentioned below:

1. To maintain political, economic, social and cultural contact between the two countries.
2. To create favourable conditions for continuous development of inter-Parliamentary contents, especially in the organisation of talks, mutual exchanges and co-operation between the two Parliaments.
3. To assist in having exchanges of information and experiences on issues related to Parliamentary activities.
4. To promote co-operation between the delegations of the two countries while participating in the deliberations of international organisations and also in

carrying out consultations on issues of mutual interest.

5. To increase ties between the member countries.

THE IPG AND IPU[5]

The IPU is an international organisation of the parliaments of sovereign states. At present, the IPU consists of 179 parliaments of sovereign nations. Its aim is to work for peace and cooperation among peoples and for the firm establishment of representative institutions. It fosters contacts, coordination and the exchange of experience among parliaments and parliamentarians of all member countries and contributes to better knowledge of the working of representative institutions. It also expresses its views on all burning questions of international importance for necessary effective implementation of parliamentary actions and suggests avenues for improving the working standard and capacity of international institutions.

The main advantages of membership of the IPG, insofar as its functions as the National Group of the IPU are concerned, are as follows:

1. It helps members of the Indian Parliamentary delegations to develop contacts with the parliamentarians of the member countries of the IPU.
2. The events provide an opportunity to study and understand contemporary changes/reforms taking place in various countries of the world.
3. It provides facilities to meet parliamentarians in different countries during tours in abroad.
4. The members of the IPG are eligible to visit foreign countries as members of the Indian Parliamentary delegations to Inter-Parliamentary Conferences.

Further, members of the IPG have been holding various positions in the IPU bodies, namely, office bearers in different committees of the IPU, Rapporteurs, Chairman of Drafting Committees, etc. and by virtue of the same, the IPG has been successful in putting forward effectively the viewpoint of India on various important issues dealt in the IPU meetings.

THE IPG AND CPA[6]

The CPA is an association of about 17000 Parliamentarians and Parliamentary staff spread over 180 National, State, Provincial and Territorial Parliaments and Legislatures in 53 Commonwealth countries. Its aims are to promote knowledge and understanding of the constitutional, legislative, economic, social and cultural systems within a parliamentary democratic framework with particular reference to the countries of the Commonwealth of Nations and to countries having close historical and parliamentary associations with it. Its mission is to promote the advancement of parliamentary democracy by enhancing knowledge and understanding of democratic governance and by building an informed parliamentary community able to deepen the Commonwealth's democratic commitment and to further co-operation among its parliaments and legislatures.

The main advantages of membership of the IPG, insofar as its functions as the main branch of the CPA in India are concerned, are as follows:

1. **Conferences and Seminars:** Membership provides an opportunity for participation in the plenary and regional conferences, seminars, visits and exchanges of delegations.
2. **Publications:** All members of the IPG are entitled to receive, free of charge, 'The Parliamentarian' quarterly and the newsletter, 'First Reading', every second month.[7]

[5]*Hand Book for Members of Lok Sabha*, Fifteenth Edition, 2009, pp. 207–208.

[6]*Ibid*, pp. 208–209.

[7]These are published by the CPA Secretariat, London.

3. **Information:** The Parliamentary Information and Reference Centre of the CPA Secretariat provides information to members on parliamentary, constitutional and Commonwealth matters.
4. **Introductions:** The CPA branches readily assist in arranging introductions for members visiting other jurisdictions.
5. **Parliamentary Facilities:** Members visiting other Commonwealth countries are normally accorded parliamentary courtesies, especially access to debates and local members.
6. **Travel Facilities:** Some branches provide for a designated number of their members annually to undertake study tours of Commonwealth and other countries to compare political and procedural developments. Other branches arrange ad hoc visits.

CHAPTER 26 Supreme Court

Unlike the American Constitution, the Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it. Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts, adopted from the Government of India Act of 1935, enforces both Central laws as well as the state laws. In USA, on the other hand, the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary. There is thus a double system of courts in USA—one for the centre and the other for the states. To sum up, India, although a federal country like the USA, has a unified judiciary and one system of fundamental law and justice.

The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935. However, the jurisdiction of the Supreme Court is greater than that of its predecessor. This is because, the Supreme Court has replaced the British Privy Council as the highest court of appeal.[1]

Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court. The Parliament is also authorised to regulate them.

[1]Before 1950, the British Privy Council had the jurisdiction to hear appeals from India.

COMPOSITION AND APPOINTMENT

At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty three other judges). Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges). The Parliament has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977, to twenty-five in 1986, to thirty in 2008 and to thirty-three in 2019.

The various Acts relating to the composition of the Supreme Court are summarised in Table 26.2.

Appointment of Judges The judges of the Supreme Court are appointed by the President. The chief justice is appointed by the President after consultation with such judges of the Supreme Court and high courts as he/she deems necessary. The other judges are appointed by President after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he/she deems necessary. The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.

Controversy over Consultation The Supreme Court has given different interpretation of the word 'consultation' in the above provision. In the *First Judges* case[1a] (1981), the Court held that consultation does not mean concurrence

[1a]*S.P. Gupta* vs. *Union of India* (1981).

and it only implies exchange of views. But, in the *Second Judges* case[1b] (1993), the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence. Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in the matters of appointment of the judges of the Supreme Court. But, the Chief Justice would tender his/her advice on the matter after consulting two of his/her seniormost colleagues. Similarly, in the *Third Judges* case[2] (1998), the Court opined that the consultation process to be adopted by the Chief justice of India requires 'consultation of plurality judges'. The sole opinion of the chief justice of India does not constitute the consultation process. He/she should consult a collegium of four seniormost judges of the Supreme Court and even if two judges give an adverse opinion, he/she should not send the recommendation to the government. The court held that the recommendation made by the chief justice of India without complying with the norms and requirements of the consultation process are not binding on the government.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the collegium system of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC). However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void. Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the *Fourth Judges* case[2a] (2015). The court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

Appointment of Chief Justice From 1950 to 1973, the practice has been to appoint the seniormost judge of the Supreme Court as the chief justice of India. This established convention was violated in 1973 when A.N. Ray was appointed as the Chief Justice of India by superseding three senior judges.[3] Again in 1977, M.U. Beg was appointed as the chief justice of India by superseding the then senior-most judge.[4] This discretion of the government was curtailed by the Supreme Court in the *Second Judges* case (1993), in which the Supreme Court ruled that the seniormost judge of the Supreme Court should alone be appointed to the office of the chief justice of India.

QUALIFICATIONS, OATH AND SALARIES

Qualifications of Judges A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He/she should be a citizen of India.
2. (a) He/she should have been a judge of a High Court (or high courts in succession) for five years; or (b) He/she should have been an advocate of a High Court (or High Courts in succession) for ten years; or (c) He/she should be a distinguished jurist in the opinion of the President.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

[1b]Supreme Court Advocates-on-Record Association vs. Union of India (1993).

[2]In Re-Presidential Reference (1998). The President sought the Supreme Court's opinion (under Article 143) on certain doubts over the Consultation process to be adopted by the chief justice of India as stipulated in the 1993 case.

[2a]Supreme Court Advocates-on-Record Association vs. Union of India (2015).

[3]A.N. Ray was fourth in seniority. The three superseded judges were J.M. Shelat, K.S. Hegde and A.N. Grover. All the three judges resigned from the Supreme Court. They were superseded due to their judgement in *Kesavananda Bharati* case (1973), which was not favourable to the Government.

[4]He was H.R. Khanna and he too resigned. His dissenting judgement upholding the right to life even during emergency in the *ADM Jabalpur* vs. *Shivkant Shukla* case (1976) was not appreciated by the Government.

Oath or Affirmation A person appointed as a judge of the Supreme Court, before entering upon his/her Office, has to make and subscribe an oath or affirmation before the President, or some person appointed by him/her for this purpose. In his/her oath, a judge of the Supreme Court swears:

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India;
3. to duly and faithfully and to the best of his/her ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and
4. to uphold the Constitution and the laws.

Salaries and Allowances The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2018, the salary of the chief justice was increased from ₹1 lakh to ₹2.80 lakh per month and that of a judge from ₹90,000 to ₹2.50 lakh per month[5]. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc.

The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

TENURE AND REMOVAL

Tenure of Judges The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

1. He/she holds office until he/she attains the age of 65 years. Any question regarding his/her age is to be determined by such authority and in such manner as provided by Parliament.
2. He/she can resign from his/her office by writing to the President.
3. He/she can be removed from his/her office by the President on the recommendation of the Parliament.

Removal of Judges A judge of the Supreme Court can be removed from his/her Office by an order of the President. The President can issue the removal order only after an address by Parliament has been presented to him/her in the same session for such removal. The address must be supported by a special majority of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two—proved misbehaviour or incapacity.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment[6]:

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.

[5]In 1950, their salaries were fixed at ₹5,000 per month and ₹4,000 per month respectively. In 1986, their salaries were raised to ₹10,000 per month and ₹9,000 per month respectively. In 1998, their salaries were raised to ₹33,000 per month and ₹30,000 per month respectively. In 2009, their salaries were raised to ₹1 lakh per month and ₹90,000 per month respectively.

[6]The word 'impeachment' is not used in the constitution in relation to the removal of judges. However, it is used only in the case of the removal of the President.

5. If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
6. After the motion is passed by each House of Parliament by special majority, an address is presented to the President for removal of the judge.
7. Finally, the President passes an order removing the judge.

It is interesting to know that no judge of the Supreme Court has been impeached so far. The first case of impeachment is that of Justice V. Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him/her guilty of misbehaviour, he/she could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

ACTING, ADHOC AND RETIRED JUDGES

Acting Chief Justice The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:

1. the office of Chief Justice of India is vacant; or
2. the Chief Justice of India is temporarily absent; or
3. the Chief Justice of India is unable to perform the duties of his/her office.

Ad hoc Judge When there is a lack of quorum of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period. He/she can do so only after consultation with the chief justice of the High Court concerned and with the previous consent of the President. The judge so appointed should be qualified for appointment as a judge of the Supreme Court. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his/her office. While so attending, he/she enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court.

Retired Judge At any time, the chief justice of India can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period. He/she can do so only with the previous consent of the President and also of the person to be so appointed. Such a judge is entitled to such allowances as the President may determine. He/she will also enjoy all the jurisdiction, powers and privileges of a judge of Supreme Court. But, he/she will not otherwise be deemed to be a judge of the Supreme Court.

SEAT AND PROCEDURE

Seat of Supreme Court The Constitution declares Delhi as the seat of the Supreme Court. But, it also authorises the chief justice of India to appoint other place or places as seat of the Supreme Court. He/she can take decision in this regard only with the approval of the President. This provision is only optional and not compulsory. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as a seat of the Supreme Court.

Procedure of the Court The Supreme Court can, with the approval of the President, make rules for regulating generally the practice and procedure of the Court. The Constitutional cases or references made by the President under Article 143 are decided by a Bench consisting of at least five judges. All other cases are decided by single judges and division benches. The judgements are delivered by the open court. All judgements are by majority vote but if differing, then judges can give dissenting judgements or opinions.

INDEPENDENCE OF SUPREME COURT

The Supreme Court has been assigned a very significant role in the Indian democratic political system. It is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution. Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favour.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:

1. Mode of Appointment The judges of the Supreme Court are appointed by the President (which means the cabinet) in consultation with the members of the judiciary itself (ie, judges of the Supreme Court and the high courts). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

2. Security of Tenure The judges of the Supreme Court are provided with the Security of Tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the President, though they are appointed by him/her. This is obvious from the fact that no judge of the Supreme Court has been removed (or impeached) so far.

3. Fixed Service Conditions The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of the Supreme Court remain same during their term of Office.

4. Expenses Charged on Consolidated Fund The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India. Thus, they are non-votable by the Parliament (though they can be discussed by it).

5. Conduct of Judges cannot be Discussed The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

6. Ban on Practice after Retirement The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India. This ensures that they do not favour any one in the hope of future favour.

7. Power to Punish for its Contempt The Supreme Court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by any body. This power is vested in the Supreme Court to maintain its authority, dignity and honour.

8. Freedom to Appoint its Staff The Chief Justice of India can appoint officers and servants of the Supreme Court without any interference from the executive. He/she can also prescribe their conditions of service.

9. Its Jurisdiction cannot be Curtailed The Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court. The Constitution has guaranteed to the Supreme Court, jurisdiction of various kinds. However, the Parliament can extend the same.

JURISDICTION AND POWERS OF SUPREME COURT

The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court. It is not only a Federal Court like the American Supreme Court but also a final court of appeal like the British House of Lords (the Upper House of the British Parliament). It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens. Further, it has advisory and supervisory powers. Therefore, Alladi Krishnaswamy Ayyar, a member of the Drafting Committee of the Constituent Assembly, rightly remarked: "The Supreme Court of India has more powers than any other Supreme Court in any part of the world." The jurisdiction and powers of the Supreme Court can be classified into the following:

1. Original Jurisdiction.
2. Writ Jurisdiction.
3. Appellate Jurisdiction.
4. Advisory Jurisdiction.
5. A Court of Record.
6. Power of Judicial Review.
7. Constitutional Interpretation
8. Other Powers.

1. Original Jurisdiction

As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute:

(a) Between the Centre and one or more states; or
(b) Between the Centre and any state or states on one side and one or more other states on the other side; or
(c) Between two or more states.

In the above federal disputes, the Supreme Court has exclusive original jurisdiction. Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.

With regard to the exclusive original jurisdiction of the Supreme Court, two points should be noted. One, the dispute must involve a question (whether of law or fact) on which the existence or extent of a legal right depends. Thus, the questions of political nature are excluded from it. Two, any suit brought before the Supreme Court by a private citizen against the Centre or a state cannot be entertained under this.

Further, this jurisdiction of the Supreme Court does not extend to the following:

(a) A dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of the constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.
(b) Inter-state river water disputes.[7]
(c) Matters referred to the Finance Commission.
(d) Adjustment of certain expenses and pensions between the Centre and the states.

In 1961, the first suit, under the original jurisdiction of the Supreme Court, was brought by West Bengal against the Centre. The State Government challenged the Constitutional validity of the Coal Bearing Areas (Acquisition and Development) Act, 1957, passed by the Parliament. However, the Supreme Court dismissed the suit by upholding the validity of the Act.

2. Writ Jurisdiction

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. The Supreme Court is empowered to issue writs

[7]The Inter-State River Water Disputes Act of 1956 has excluded the original jurisdiction of the Supreme Court in disputes between states with respect to the use, distribution or control of the water of inter-state river or river valley.

including *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* for the enforcement of the fundamental rights of an aggrieved citizen. In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights. It means, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

Therefore, the original jurisdiction of the Supreme Court with regard to federal disputes is different from its original jurisdiction with regard to disputes relating to fundamental rights. In the first case, it is exclusive and in the second case, it is concurrent with high courts jurisdiction. Moreover, the parties involved in the first case are units of the federation (Centre and states) while the dispute in the second case is between a citizen and the Government (Central or state).

There is also a difference between the writ jurisdiction of the Supreme Court and that of the high court. The Supreme Court can issue writs only for the enforcement of the Fundamental Rights and not for other purposes. The high court, on the other hand, can issue writs not only for the enforcement of the fundamental rights but also for other purposes. It means that the writ jurisdiction of the high court is wider than that of the Supreme Court. But, the Parliament can confer on the Supreme Court, the power to issue writs for other purposes also.

3. Appellate Jurisdiction

As mentioned earlier, the Supreme Court has not only succeeded the Federal Court of India but also replaced the British Privy Council as the highest court of appeal. The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the High courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

(a) Appeals in constitutional matters.
(b) Appeals in civil matters.
(c) Appeals in criminal matters.
(d) Appeals by special leave.

(a) Constitutional Matters In the constitutional cases, an appeal can be made to the Supreme Court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution. Based on the certificate, the party in the case can appeal to the Supreme Court on the ground that the question has been wrongly decided.

(b) Civil Matters In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies—

(i) that the case involves a substantial question of law of general importance; and
(ii) that the question needs to be decided by the Supreme Court.

Originally, only those civil cases that involved a sum of not less than ₹20,000 could be appealed before the Supreme Court. But this monetary limit was removed by the 30th Constitutional Amendment Act of 1972.

(c) Criminal Matters The Supreme Court hears appeals against the judgement in a criminal proceeding of a high court if the high court—

(i) has on appeal reversed an order of acquittal of an accused person and sentenced him/her to death; or
(ii) has taken before itself any case from any subordinate court and convicted the accused person and sentenced him/her to death; or
(iii) certifies that the case is a fit one for appeal to the Supreme Court.

In the first two cases, an appeal lies to the Supreme Court as a matter of right (ie, without any certificate of the high court). But if the high court has reversed the order of conviction and has ordered the acquittal of the accused, there is no right to appeal to the Supreme Court.

In 1970, the Parliament had enlarged the Criminal Appellate Jurisdiction of the Supreme Court. Accordingly, an appeal lies to the Supreme Court from the judgement of a high court if the high court:

(i) has on appeal, reversed an order of acquittal of an accused person and sentenced him/her to imprisonment for life or for ten years; or

(ii) has taken before itself any case from any subordinate court and convicted the accused person and sentenced him/her to imprisonment for life or for ten years.

(d) Appeal by Special Leave The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial). This provision contains the four aspects as under:

(i) It is a discretionary power and hence, cannot be claimed as a matter of right.

(ii) It can be granted in any judgement whether final or interlocutory.

(iii) It may be related to any matter—constitutional, civil, criminal, income-tax, labour, revenue, advocates, etc.

(iv) It can be granted against any court or tribunal and not necessarily against a high court (of course, except a military court).

Thus, the scope of this provision is very wide and it vests the Supreme Court with a plenary jurisdiction to hear appeals. On the exercise of this power, the Supreme Court itself held that 'being an exceptional and overriding power, it has to be exercised sparingly and with caution and only in special extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule'.

4. Advisory Jurisdiction

The Constitution (Article 143) authorises the President to seek the opinion of the Supreme Court in the two categories of matters:

(a) On any question of law or fact of public importance which has arisen or which is likely to arise.

(b) On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad or other similar instrument, which is excluded from the original jurisdiction of the Supreme Court.

In the first case, the Supreme Court may tender or may refuse to tender its opinion to the President. But, in the second case, the Supreme Court 'must' tender its opinion to the President. In both the cases, the opinion expressed by the Supreme Court is only advisory and not a judicial pronouncement. Hence, it is not binding on the President; he/she may follow or may not follow the opinion. However, it facilitates the government to have an authoritative legal opinion on a matter to be decided by it.

So far, the President has made fifteen references to the Supreme Court under its advisory jurisdiction (also known as consultative jurisdiction). These are mentioned below in the chronological order.

1. Delhi Laws Act in 1951
2. Kerala Education Bill in 1958
3. Berubari Union in 1960
4. Sea Customs Act in 1963
5. Keshav Singh's case relating to the privileges of the Legislature in 1964
6. Presidential Election in 1974
7. Special Courts Bill in 1978
8. Jammu and Kashmir Resettlement Act in 1982
9. Cauvery Water Disputes Tribunal in 1992
10. Rama Janma Bhumi case in 1993
11. Consultation process to be adopted by the chief justice of India in 1998
12. Legislative competence of the Centre and States on the subject of natural gas and liquefied natural gas in 2001
13. The constitutional validity of the Election Commission's decision on deferring the Gujarat Assembly Elections in 2002
14. Punjab Termination of Agreements Act in 2004
15. 2G spectrum case verdict and the mandatory auctioning of natural resources across all sectors in 2012

5. A Court of Record

As a Court of Record, the Supreme Court has two powers:

(a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognised as legal precedents and legal references.

(b) It has power to punish for contempt of itself. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

Contempt of Courts Act (1971) In 1961, the government appointed a special committee under the chairmanship of H.N. Sanyal, the then Additional Solicitor General of India, to examine the law relating to the contempt of courts. This committee submitted its report in 1963. Based on the recommendations made by the committee, the Contempt of Courts Act, 1971 was enacted by the Parliament.

Under the Act, the contempt of court may be civil or criminal. The civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court. The criminal contempt, on the other hand, means the publication of any matter or doing an act which—**(i)** scandalises or lowers the authority of a court; or **(ii)** prejudices or interferes with the due course of a judicial proceeding; or **(iii)** interferes or obstructs the administration of justice in any other manner.

However, innocent publication and distribution of matter, fair and accurate report of judicial proceedings and fair criticism of judicial acts do not amount to contempt of court.

Under the Act, a contempt of court is punishable with simple imprisonment for a term upto six months or with fine upto ₹2,000 or with both.

The Act also provides that no court shall initiate any proceedings of contempt after the expiry of one year from the date on which the contempt is alleged to have been committed.

Further, this Act is not applicable to contempt of Nyaya Panchayats or other village courts which have been established for the administration of justice.

6. Power of Judicial Review

Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (*ultra-vires*), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government.

7. Review Jurisdiction

The Supreme Court has power to review any judgement pronounced or order made by it. A review petition has to be filed within thirty days from the date of the judgement or order sought to be reviewed. Also, the review petition should be submitted to the same judge or bench that delivered the judgement or order. Further, a review petition is allowed on the following grounds:

(i) Discovery of new and important matter or evidence.

(ii) Mistake or error apparent on the face of the record.

(iii) Any other sufficient reason.

The court may either dismiss the review petition or direct notice to the opposite party. However, even after the dismissal of the review petition, the court can still reconsider its final judgement or order by way of a curative petition on limited grounds like:

(i) Violation of the principles of natural justice.

(ii) To cure a gross miscarriage of justice.

(iii) To prevent abuse of the process of the court.
(iv) Bias of the judge.

8. Constitutional Interpretation

The Supreme Court is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the constitution and the verbiage used in the constitution.

While interpreting the constitution, the Supreme Court is guided by a number of doctrines. In other words, the Supreme Court applies various doctrines in interpreting the constitution. The important doctrines are mentioned below:

1. Doctrine of Severability
2. Doctrine of Waiver
3. Doctrine of Eclipse
4. Doctrine of Territorial Nexus
5. Doctrine of Pith and Substance
6. Doctrine of Colourable Legislation
7. Doctrine of Implied Powers
8. Doctrine of Incidental and Ancillary Powers
9. Doctrine of Precedent
10. Doctrine of Occupied Field
11. Doctrine of Prospective Overruling
12. Doctrine of Harmonious Construction
13. Doctrine of Liberal Interpretation

9. Other Powers

Besides the above, the Supreme Court has numerous other powers:

(a) It decides the disputes regarding the election of the President and the vice-President. In this regard, it has the original, exclusive and final authority.
(b) It enquires into the conduct and behaviour of the chairman and members of the UPSC or SPSC or JSPSC on a reference made by the President. If it finds them guilty of misbehaviour, it can recommend to the President for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.
(c) It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.
(d) Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.
(e) It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.

The Supreme Court's jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament. Further, its jurisdiction and powers with respect to other matters can be enlarged by a special agreement of the Centre and the states.

INDIAN AND AMERICAN SUPREME COURTS COMPARED

There are differences in the jurisdiction and powers of the Supreme Court of India and that of the Supreme Court of USA. These are summarised in Table 26.1.

Table 26.1 Comparing Indian and American Supreme Courts

Indian Supreme Court	American Supreme Court
1. Its original jurisdiction is confined to federal cases.	1. Its original jurisdiction covers not only federal cases but also cases relating to naval forces, maritime activities, ambassadors, etc.
2. Its appellate jurisdiction covers constitutional, civil and criminal cases.	2. Its appellate jurisdiction is confined to constitutional cases only.
3. It has a very wide discretion to grant special leave to appeal in any matter against the judgement of any court or tribunal (except military).	3. It has no such plenary power.
4. It has advisory jurisdiction.	4. It has no advisory jurisdiction.
5. Its scope of judicial review is limited.	5. Its scope of judicial review is very wide.
6. It defends rights of the citizen according to the 'procedure established by law'.	6. It defends rights of the citizen according to the 'due process of law'.
7. Its jurisdiction and powers can be enlarged by Parliament.	7. Its jurisdiction and powers are limited to that conferred by the Constitution.
8. It has power of judicial superintendence and control over state high courts due to integrated judicial system.	8. It has no such power due to double (or separated) judicial system.

Table 26.2 Acts Relating to the Composition of the Supreme Court

Sl. No.	Act (Year)	Maximum Number of Judges Fixed (Excluding Chief Justice of India)	Maximum Number of Judges Fixed (Including Chief Justice of India)
1.	Article 124 of the Constitution	7	8
2.	Supreme Court (Number of Judges) Act, 1956	10	11
3.	Supreme Court (Number of Judges) Amendment Act, 1960	13	14
4.	Supreme Court (Number of Judges) Amendment Act, 1977	17	18
5.	Supreme Court (Number of Judges) Amendment Act, 1986	25	26
6.	Supreme Court (Number of Judges) Amendment Act, 2008	30	31
7.	Supreme Court (Number of Judges) Amendment Act, 2019	33	34

Note: Article 124(1) of the Constitution reads as follows: "There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other judges".

Table 26.3 Articles Related to Supreme Court at a Glance

Article No.	Subject-matter
124.	Establishment and Constitution of Supreme Court
124A.	National Judicial Appointments Commission
124B.	Functions of Commission
124C.	Power of Parliament to make law
125.	Salaries, etc., of Judges
126.	Appointment of acting Chief Justice
127.	Appointment of *ad hoc* Judges
128.	Attendance of retired Judges at sittings of the Supreme Court
129.	Supreme Court to be a court of record
130.	Seat of Supreme Court
131.	Original jurisdiction of the Supreme Court
131A.	Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central Laws (Repealed)
132.	Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases
133.	Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters
134.	Appellate jurisdiction of Supreme Court in regard to criminal matters
134A.	Certificate for appeal to the Supreme Court
135.	Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court
136.	Special leave to appeal by the Supreme Court
137.	Review of judgments or orders by the Supreme Court
138.	Enlargement of the jurisdiction of the Supreme Court
139.	Conferment on the Supreme Court of powers to issue certain writs
139A.	Transfer of certain cases
140.	Ancillary powers of Supreme Court
141.	Law declared by Supreme Court to be binding on all courts
142.	Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
143.	Power of President to consult Supreme Court
144.	Civil and judicial authorities to act in aid of the Supreme Court
144A.	Special provisions as to disposal of questions relating to constitutional validity of laws (Repealed)
145.	Rules of court, etc.
146.	Officers and servants and the expenses of the Supreme Court
147.	Interpretation

In a number of cases, the Supreme Court has pointed out the significance of the power of judicial review in our country. Some of the observations made by it, in this regard, are given below:

"In India it is the Constitution that is supreme and that a statute law to be valid, must be in conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is constitutional or not".[2]

"Our constitution contains express provisions for judicial review of legislation as to its conformity with the constitution. This is especially true as regards the Fundamental Rights, to which the court has been assigned the role of sentinel on the qui vive".[3]

"As long as some Fundamental Rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by these Rights are not contravened".[4]

"The Constitution is supreme lex, the permanent law of the land, and there is no branch of government above it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one however highly placed and no authority howsoever lofty, can claim that it shall be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the constitution. This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits".[5]

"It is the function of the Judges, may their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power, the Fundamental Rights conferred on the people will become a mere adornment because rights without remedies are as writ in water. A controlled Constitution will then become uncontrolled".[6]

"The judges of the Supreme Court have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations"[7].

"The founding fathers very wisely, therefore, incorporated in the Constitution itself the provisions of judicial review so as to maintain the balance of federalism, to protect the Fundamental Rights and Fundamental Freedoms guaranteed to the citizens and to afford a useful weapon for availability, availment and enjoyment of equality, liberty and Fundamental Freedoms and to help to create a healthy nationalism. The function of judicial review is a part of the constitutional interpretation itself. It adjusts the Constitution to meet new conditions and needs of the time".[8]

CONSTITUTIONAL PROVISIONS FOR JUDICIAL REVIEW

Though the phrase 'Judicial Review' has nowhere been used in the Constitution, the provisions of several Articles explicitly confer the power of judicial review on the Supreme Court and the High Courts. These provisions are explained below:

1. Article 13 declares that all laws that are inconsistent with or in derogation of the

[2]Chief Justice Kania in *A.K. Gopalan* vs. *State of Madras* (1950).

[3]Chief Justice Patanjali Shastri in *State of Madras* vs. *V.G. Row* (1952).

[4]Justice Khanna in *Kesavananda Bharati* vs. *State of Kerala* (1973).

[5]Justice Bhagwati in *State of Rajasthan* vs. *Union of India* (1977).

[6]Chief Justice Chandrachud in *Minerva Mills* vs. *Union of India* (1980).

[7]Chief Justice Ahmadi in *L. Chandra Kumar* vs. *Union of India* (1997).

[8]Justice Ramaswami in *S.S. Bola* vs. *B.D. Sharma* (1997).

Fundamental Rights shall be null and void.

2. Article 32 guarantees the right to move the Supreme Court for the enforcement of the Fundamental Rights and empowers the Supreme Court to issue directions or orders or writs for that purpose.
3. Article 131 provides for the original jurisdiction of the Supreme Court in centre–state and inter-state disputes.
4. Article 132 provides for the appellate jurisdiction of the Supreme Court in constitutional cases.
5. Article 133 provides for the appellate jurisdiction of the Supreme Court in civil cases.
6. Article 134 provides for the appellate jurisdiction of the Supreme Court in criminal cases.
7. Article 134-A deals with the certificate for appeal to the Supreme Court from the High Courts.[9]
8. Article 135 empowers the Supreme Court to exercise the jurisdiction and powers of the Federal Court under any pre-constitution law.
9. Article 136 authorises the Supreme Court to grant special leave to appeal from any court or tribunal (except military tribunal and court martial).
10. Article 143 authorises the President to seek the opinion of the Supreme Court on any question of law or fact and on any pre-constitution legal matters.
11. Article 226 empowers the High Courts to issue directions or orders or writs for the enforcement of the Fundamental Rights and for any other purpose.
12. Article 227 vests in the High Courts the power of superintendence over all courts and tribunals within their respective territorial jurisdictions (except military courts or tribunals).
13. Article 245 deals with the territorial extent of laws made by Parliament and by the Legislatures of States.
14. Article 246 deals with the subject matter of laws made by Parliament and by the Legislatures of States (i.e., Union List, State List and Concurrent List).
15. Articles 251 and 254 provide that in case of a conflict between the central law and state law, the central law prevails over the state law and the state law shall be void.
16. Article 372 deals with the continuance in force of the pre-constitution laws.

SCOPE OF JUDICIAL REVIEW

The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court or in the High Courts on the following three grounds.

(a) it infringes the Fundamental Rights (Part III),
(b) it is outside the competence of the authority which has framed it, and
(c) it is repugnant to the constitutional provisions.

From the above, it is clear that the scope of judicial review in India is narrower than what exists in the USA, though the American Constitution does not explicitly mention the concept of judicial review in any of its provisions. This is because, the American Constitution provides for 'due process of law' against that of 'procedure established by law' which is contained in the Indian Constitution. The difference between the two is: "The due process of law gives wide scope to the Supreme Court to grant protection to the rights of its citizens. It can declare laws violative of these rights void not only on substantive grounds of being unlawful, but also on procedural grounds of being unreasonable. Our Supreme Court, while determining the constitutionality of a law, however examines only the substantive question i.e., whether the law is within the powers of the authority concerned or not. It is not expected to go into the question of its reasonableness, suitability or policy implications".[10]

[9]This provision was added by the 44th Constitutional Amendment Act of 1978.

[10]Subhash C. Kashyap, *Our Constitution*, National Book Trust, Third Edition, 2001, p. 232.

The exercise of wide power of judicial review by the American Supreme Court in the name of 'due process of law' clause has made the critics to describe it as a 'third chamber' of the Legislature, a super-legislature, the arbiter of social policy and so on. This American principle of judicial supremacy is also recognised in our constitutional system, but to a limited extent. Nor do we fully follow the British Principle of parliamentary supremacy. There are many limitations on the sovereignty of Parliament in our country, like the written character of the Constitution, the federalism with division of powers, the Fundamental Rights and the judicial review. In effect, what exists in India is a synthesis of both, that is, the American principle of judicial supremacy and the British principle of parliamentary supremacy.

JUDICIAL REVIEW OF THE NINTH SCHEDULE

Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the Fundamental Rights. Article 31B along with the Ninth Schedule was added by the 1st Constitutional Amendment Act of 1951.

Originally (in 1951), the Ninth Schedule contained only 13 acts and regulations but at present their number is 282.[11] Of these, the acts and regulations of the state legislature deal with land reforms and abolition of the zamindari system and that of the Parliament deal with other matters.

However, in the *Kesavananda Bharati* case[12] (1973), the Supreme Court rules that the acts and regulations that are included in the Ninth Schedule are open to challenge on the grounds of being violative of the basic structure of the constitution. This was later clarified by the court in the *Waman Rao* case[13] (1980) wherein it held that the various acts and regulations included in the Ninth Schedule after 24 April, 1973 (date of judgement in the Kesavananda Bharati case) are valid only if they do not damage the basic structure of the constitution.

Again, in the *I.R. Coelho* case[14] (2007), the Supreme Court reaffirmed the above view. In this case, the court ruled that there could not be any blanket immunity from judicial review of the laws included in the Ninth Schedule. It held that judicial review is a 'basic feature' of the constitution and it could not be taken away putting a law under the Ninth Schedule. It said that the laws placed under the Ninth Schedule after 24 April, 1973, are open to challenge in court if they violated fundamental rights guaranteed under Articles 14, 15, 19 and 21 or the basic structure of the constitution.

While delivering the above judgement, the Supreme Court made the following conclusions:

1. A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine, or it may not. If former is the consequence of law, whether by an amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in the exercise of judicial review power of the Court. The constitutional validity of the Ninth Schedule laws on the touchstone of basic structure doctrine can be adjudged by applying the direct impact and effect test, i.e., rights test, which means the form of an amendment is not the relevant factor, but the consequence

[11] Though the last entry is numbered 284, the actual total number is 282. This is because, the three entries (87, 92 and 130) have been deleted and one entry is numbered as 257A.

[12] *Kesavananda Bharati* vs. *State of Kerala* (1973).

[13] *Waman Rao* vs. *Union of India* (1980).

[14] *I.R. Coelho* vs. *State of Tamil Nadu* (2007).

thereof would be the determinative factor.

2. The majority judgement in the *Kesavanand Bharati* Case read with *Indira Gandhi* case[15] requires the validity of each new constitutional Amendment to be judged on its own merits. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge.
3. All amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Articles 14 and 19 and the principles underlying them. To put it differently, even though an act is put in the Ninth Schedule by a Constitutional Amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the Fundamental Right or rights taken away or abrogated pertains or pertain to the basic structure.
4. Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendments shall be a matter of constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right by a statute, sought to be constitutionally protected, and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Articles 14 and 19 by application of the "rights test" and the "essence of the right" test taking the synoptic view of the articles in Part III as held in the *Indira Gandhi* Case[16]. Applying the above test to the Ninth Schedule laws, if the infraction affects the basic structure, then such a law or laws will not get the protection of the Ninth Schedule. When the triangle of Article 21 read with Article 14 and Article 19 is sought to be eliminated not only the "essence of the right" test but also the "rights test" has to apply. There is also a difference between the "rights test" and the "essence of the right" test. Both form part of application of the basic structure doctrine. When in a controlled constitution conferring limited power of amendment, an entire chapter is made in applicable, the "essence of the right" test as applied in *Nagaraj* case[17] will have no applicability. In such a situation, to judge the validity of the law, it is the "rights test" which is more appropriate.
5. If the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by this judgement. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24th April, 1973, such a violation / infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Articles 14 and 19 and the principles underlying them.
6. Action taken and transactions finalized as a result of the impugned Acts shall not be open to challenge.

The number of acts and regulations included in the Ninth Schedule before and after April 24, 1973 are mentioned in Table 27.1.

[15] *Indira Nehru Gandhi* vs. *Raj Narain* (1975).

[16] *Ibid.*

[17] *M. Nagaraj* vs. *Union of India* (2006).

Table 27.1 Number of Acts and Regulations Included in the Ninth Schedule

Serial Number	Amendment Number (Year)	Number of Acts and Regulations Included in the Ninth Schedule
I. Included Before April 24, 1973		
1.	First Amendment (1951)	13 (1 to 13)
2.	Fourth Amendment (1955)	7 (14 to 20)
3.	Seventh Amendment (1964)	44 (21 to 64)
4.	Twenty-Ninth Amendment (1972)	2 (65 to 66)
II. Included After April 24, 1973		
5.	Thirty-Fourth Amendment (1974)	20 (67 to 86)
6.	Thirty-Ninth Amendment (1975)	38 (87 to 124)
7.	Fortieth Amendment (1976)	64 (125 to 188)
8.	Forty-Seventh Amendment (1984)	14 (189 to 202)
9.	Sixty-Sixth Amendment (1990)	55 (203 to 257)
10.	Seventy-Sixth Amendment (1994)	1 (257A)
11.	Seventy-Eighth Amendment (1995)	27 (258 to 284)

Note: Entries 87, 92 and 130 have been omitted by the Forty-Fourth Amendment (1978).

CHAPTER 28 Judicial Activism

The concept of judicial activism originated and developed in the USA. This term was first coined in 1947 by Arthur Schlesinger Jr., an American historian and educator.[1]

In India, the doctrine of judicial activism was introduced in the mid-1970s. Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy and Justice D.A. Desai laid the foundations of judicial activism in the country.

MEANING OF JUDICIAL ACTIVISM

Judicial activism denotes the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in the society. In other words, it implies the assertive role played by the judiciary to force the other two organs of the government (legislature and executive) to discharge their constitutional duties.

Judicial activism is also known as "judicial dynamism". It is the antithesis of "judicial restraint", which means the self-control exercised by the judiciary.

Judicial activism is defined in the following way:

1. "Judicial activism is a way of exercising judicial power that motivates judges to depart from normally practised strict adherence to judicial precedent in favour of progressive and new social policies. It is commonly marked by decision calling for social engineering, and occasionally these decisions represent intrusion in the legislative and executive matters".[2]
2. "Judicial activism is the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent, or are independent of, or in opposition to supposed constitutional or legislation intent".[3]
3. "Judicial activism can be defined as the process of law-making by judges. It means an active interpretation of existing legislation by a judge, made with a view to enhance the utility of that legislation for social betterment. Judicial activism is different from judicial pessimism which means interpretation of existing provisions of law, without an attempt to enhance its beneficial aspects".[3a]
4. "Judicial activism is a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions".[3b]
5. "Judicial activism is a procedure to evolve new principles, concepts, maxims, formulae and relief to do justice or to expand the standing of the litigant and open the door of courts for needy or to entertain litigation affecting the entire society or a section of it".[3c]

[1]His article entitled as *"The Supreme Court: 1947"* was published in the Fortune magazine.

[2]Black's Law Dictionary.

[3]Merriam Webster's Dictionary of Law.

[3a]V.G. Palishikar, Judicial Activism, AIR 1998, Journal volume 8, p. 201.

[3b]Black's Law Dictionary.

[3c]P.B. Sawant, Judicial Independence – Myth and Reality, (Pune: Board of Extra Mural Studies), 1987, p. 70.

ASPECTS OF JUDICIAL ACTIVISM

There are two major aspects of judicial activism followed by the Indian Judiciary:[3d]

(i) The first comes in the form of various directions issued by the courts to the government authorities for protecting the rights of citizens and fulfilment of a course of public interest. The cases Public Interest Litigation (PIL) fall under this aspect of judicial activism.

(ii) The second major aspect of judicial activism in India is the field of interpretation of fundamental rights, particularly the right to equality (Article 14), the right to freedom (Article 19) and the right to life and personal liberty (Article 21). The courts have expanded the scope of these rights in their discretion and interpretation of the constitution.

JUDICIAL REVIEW AND JUDICIAL ACTIVISM

The concepts of judicial review and judicial activism are closely related to each other. But, there is a difference between them. The following points bring out this difference:

1. Since about the mid-20th century, a version of judicial review has acquired the nick-name of judicial activism, especially in the USA. In India, the participants in the debate mix up judicial activism with judicial review. The former is that form of latter in which judges participate in law-making policies, i.e., not only they uphold or invalidate laws in terms of constitutional provisions, but also exercise their policy preferences in doing so.[3e]
2. The concept of judicial review is the interpretation of the law in the light of constitutional parameters but judicial activism is moulding the law to suit the changing social and economic scenario to make the ideals enshrined in the constitution meaningful and real.[3f]
3. The term "judicial activism" came into currency some time in the twentieth century to describe the act of judicial legislation i.e., judges making positive law. However, there is no standard definition of the term "judicial activism". As a whole it can be said that judicial activism stresses the importance of judicial review and a powerful judiciary in the protection and promotion of certain core rights.[3g]
4. The expanded concept of locus standi in connection with PIL, by judicial interpretation from time-to-time, has expanded the jurisdictional limits of the courts exercising judicial review. This expanded role has been given the title of "judicial activism" by those who are critical of this expanded role of the judiciary.[3h]
5. Judicial activism, as regards constitutional cases, falls under the rubric of what is commonly called judicial review, and at the broadest level, it is any occasion where a court intervenes and strikes down a piece of duly enacted legislation.[3i]

[3d] Adish C. Aggarwal, Judicial Activism in India, Chapter 12 in Judicial Activism in India: A Festschrift in honour of Justice V.R. Krishna Iyer, Edited by Lokendra Malik, Universal Law Publishing Co., First Edition, 2013, p. 125.

[3e] V.N. Shukla and Mahendra Pal Singh, Constitution of India, Eastern Book Company, Thirteenth Edition, 2017, p. A-51.

[3f] Dr. G. Rajasekar, Philosophy of Judicial Activism and its Role in the Growth of Environmental Jurisprudence, Chapter 5, Part II, in Judiciary in India: Constitutional Perspectives, Edited by G. Monoher Rao, Dr. G.B. Reddy and V. Geeta Rao, Asia Law House, Hyderabad, First Edition, 2009, p. 180.

[3g] Dr. Vishal Guleria, Judicial Activism: A Ray of Hope for the Marginalised Masses, Chapter 22 in Judicial Activism in India: A Festschrift in honour of Justice V.R. Krishna Iyer, Edited by Lokendra Malik, Universal Law Publishing co., First Edition, 2013, pp. 292–293.

[3h] Justice A.S. Anand, Judicial Review-Judicial Activism-Need for Caution, Chapter 1 in Judicial Activism in India: A Festschrift in honour of Justice V.R. Krishna Iyer, Edited by Lokendra Malik, Universal Law Publishing Co., First Edition, 2013, p. 7.

[3i] Rabindra Kr. Pathak, Judicial Process, First Edition, 2019, Thomson Reuters, p. 259.

JUSTIFICATION OF JUDICIAL ACTIVISM

According to Dr. B.L. Wadehra, the reasons for judicial activism are as follows:[4]

(i) There is near collapse of the responsible government, when the Legislature and Executive fail to discharge their respective functions. This results in erosion of the confidence in the Constitution and democracy amongst the citizens.

(ii) The citizens of the country look up to the judiciary for the protection of their rights and freedoms. This leads to tremendous pressure on judiciary to step in aid for the suffering masses.

(iii) Judicial Enthusiasm, that is, the judges like to participate in the social reforms that take place in the changing times. It encourages the Public Interest Litigation and liberalises the principle of 'Locus Standi'.

(iv) Legislative Vacuum, that is, there may be certain areas, which have not been legislated upon. It is therefore, upon the court to indulge in judicial legislation and to meet the changing social needs.

(v) The Constitution of India has itself adopted certain provisions, which gives judiciary enough scope to legislate or to play an active role.

Similarly, Subhash Kashyap observes that certain eventualities may be conceived when the judiciary may have to overstep its normal jurisdiction and intervene in areas otherwise falling within the domain of the legislature and the executive:[5]

(i) When the legislature fails to discharge its responsibilities.

(ii) In case of a 'hung' legislature when the government it provides is weak, insecure and busy only in the struggle for survival and, therefore, unable to take any decision which displeases any caste, community, or other group.

(iii) Those in power may be afraid of taking honest and hard decisions for fear of losing power and, for that reason, may have public issues referred to courts as issues of law in order to mark time and delay decisions or to pass on the odium of strong decision-making to the courts.

(iv) Where the legislature and the executive fail to protect the basic rights of citizens, like the right to live a decent life, healthy surroundings, or to provide honest, efficient and just system of laws and administration.

(v) Where the court of law is misused by a strong authoritarian parliamentary party government for ulterior motives, as was sought to be done during the emergency aberration.

(vi) Sometimes, the courts themselves knowingly or unknowingly become victims of human, all too human, weaknesses of craze for populism, publicity, playing to the media and hogging the headlines.

ACTIVATORS OF JUDICIAL ACTIVISM

Upendra Baxi, an eminent jurist, has delineated the following typology of social/human rights activists who activated judicial activism[6]:

1. **Civil Rights Activists:** These groups primarily focus on civil and political rights issues.
2. **People Rights Activists:** These groups focus on social and economic rights within the contexts of state repression of people's movements.
3. **Consumer Rights Groups:** These formations raise issues of consumer rights

[4]Dr. B.L. Wadehra, *Public Interest Litigation: A Handbook*, Second Edition, 2009, Universal Law Publishing Co., pp. 161–162.

[5]Subhash C. Kashyap, "Judiciary Legislature Interface", in *Politics India*, New Delhi, April 1997, p. 22.

[6]Upendra Baxi, "The Avatars of Indian Judicial Activism: Explorations in the Geographies of [in] Justice" in S.K. Verma and Kusum (Ed.), *Fifty Years of the Supreme Court of India—Its Grasp and Reach*, Indian Law Institute and Oxford University Press, 2000, pp. 173–175.

within the framework of accountability of the polity and the economy.

4. **Bonded Labour Groups:** These groups ask for judicial activism is nothing short of annihilation of wage slavery in India.
5. **Citizens for Environmental Action:** These groups activate an activist judiciary to combat increasing environmental degradation and pollution.
6. **Citizen Groups against Large Irrigation Projects:** These activist formations ask the Indian judiciary the impossible for any judiciary in the world, namely, cease to and desist from ordering against mega irrigation projects.
7. **Rights of Child Groups:** These groups focus on child labour, the right to literacy, juveniles in custodial institutions and rights of children born to sex workers.
8. **Custodial Rights Groups:** These groups include social action by prisoners' rights groups, women under state 'protective' custody and persons under preventive detention.
9. **Poverty Rights Groups:** These groups litigate issues concerning draught and famine relief and urban impoverished.
10. **Indigenous People's Rights Groups:** These groups agitate for issues of forest dwellers, citizens of the Fifth and Sixth Schedules of the Indian Constitution and identity rights.
11. **Women's Rights Groups:** These groups agitate for issues of gender equality, gender-based violence and harassment, rape and dowry murders.
12. **Bar-based Groups:** These associations agitate for issues concerning autonomy and accountability of the Indian judiciary.
13. **Media Autonomy Groups:** These groups focus on the autonomy and accountability of the press and instruments of mass media owned by the State.
14. **Assorted Lawyer-Based Groups:** This category includes the critically influential lawyers' groups which agitate for various causes.
15. **Assorted Individual Petitioners:** This category includes freelance activist individuals.

APPREHENSIONS OF JUDICIAL ACTIVISM

The eminent jurist, Upendra Baxi, presented a typology of fears which are generated by judicial activism. He observes: "The facts entail invocation of a wide range of fears. The invocation is designed to bring into a nervous rationality among India's most conscientious justices". He described the following types of fears[7]:

1. **Ideological fears:** (Are they usurping powers of the legislature, the executive or of other autonomous institutions in a civil society?)
2. **Epistemic fears:** (Do they have enough knowledge in economic matters of a Manmohan Singh, in scientific matters of the Czars of the atomic energy establishment, the captains of the Council of Scientific and Industrial Research, and so on?)
3. **Management fears:** (Are they doing justice by adding this kind of litigation work load to a situation of staggering growth of arrears?)
4. **Legitimation fears:** (Are not they causing depletion of their symbolic and instrumental authority by passing orders in public interest litigation which the executive may bypass or ignore? Would not the people's faith in judiciary, a democratic recourse, be thus eroded?)
5. **Democratic fears:** (Is a profusion of public interest litigation nurturing democracy or depleting its potential for the future?)
6. **Biographic fears:** (What would be my place in national affairs after superannuation if I overdo this kind of litigation?)

[7]Upendra Baxi, "Judicial Activism: Legal Education and Research in Globalising India" in *Mainstream*, New Delhi, 24 February, 1996, p. 16.

JUDICIAL ACTIVISM VS. JUDICIAL RESTRAINT

Meaning of Judicial Restraint

Judicial activism and judicial restraint are the two alternative judicial philosophies in the United States. Those who subscribe to judicial restraint contend that the role of judges should be scrupulously limited; their job is merely to say what the law is, leaving the business of law-making where it properly belongs, that is, with the legislators and the executives. Under no circumstances, moreover, should judges allow their personal political values and policy agendas to colour their judicial opinions. This view holds that the 'original intent' of the authors of the constitution and its amendments is knowable, and must guide the courts.[8]

Assumptions of Judicial Restraint

In the USA, the doctrine of judicial restraint is based on the following six assumptions[9]:

1. The Court is basically undemocratic because it is non-elective and presumably non-responsive to the popular will. Because of its alleged oligarchic composition the court should defer wherever possible to the 'more' democratic branches of government.
2. The questionable origins of the great power of judicial review, a power not specifically granted by the Constitution.
3. The doctrine of separation of powers.
4. The concept of federalism, dividing powers between the nation and the states requires of the Court deference toward the action of state governments and officials.
5. The non-ideological but pragmatic assumption that since the Court is dependent on the Congress for its jurisdiction and resources, and dependent on public acceptance for its effectiveness, it ought not to overstep its boundaries without consideration of the risks involved.
6. The aristocratic notion that, being a court of law, and inheritor and custodian of the Anglo-American legal tradition, it ought not to go too far to the level of politics—law being the process of reason and judgment and politics being concerned only with power and influence.

From the above, it is clear that all the assumptions (except the second dealing with the judicial review) hold good in the Indian context too.

Supreme Court Observations

While delivering a judgement in December 2007, the Supreme Court of India called for judicial restraint and asked courts not to take over the functions of the legislature or the executive, saying there is a broad separation of powers under the Constitution and each organ of the state must have respect for others and should not encroach on others' domain. In this context, the concerned Bench of the court made the following observations[10]:

1. The Bench said, "We are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. This is clearly unconstitutional. In the name of judicial activism, judges cannot cross their limits and try to take over functions which belong to another organ of the state".
2. The Bench said, "Judges must know their limits and must not try to run the government. They must have modesty and humility, and not behave like emperors."
3. Quoting from the book 'The Spirit of Laws' by Montesquieu on the consequences of not maintaining separation of powers among the three organs, the Bench said the French political

[8]Iain McLean and Alistair McMillan, *Oxford Concise Dictionary of Politics*, First Indian Edition, 2004, p. 284.

[9]Joel B. Grossman and Richard S. Wells (ed), *Constitutional Law and Judicial Policy Making*, 1972, pp. 56–57.

[10]*The Hindu*, "Don't cross limits, apex court asks judges", December 11, 2007.

philosopher's "warning is particularly apt and timely for the Indian judiciary today, since very often it is rightly criticised for 'overreach' and encroachment on the domain of the other two organs."

4. Judicial activism must not become judicial adventurism, the Bench warned the courts Adjudication must be done within the system of historically validated restraints and conscious minimisation of judges' preferences.
5. "The courts must not embarrass administrative authorities and must realise that administrative authorities have expertise in the field of administration while the court does not."
6. The Bench said, "The justification often given for judicial encroachment on the domain of the executive or the legislature is that the other two organs are not doing their jobs properly. Even assuming this is so, the same allegations can be made against the judiciary too because there are cases pending in courts for half-a-century."
7. If the legislature or the executive was not functioning properly, it was for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who would fulfil their expectations or by other lawful methods, e.g., peaceful demonstrations.
8. "The remedy is not in the judiciary taking over the legislative or the executive functions, because that will not only violate the delicate balance of power enshrined in the Constitution but also (because) the judiciary has neither the expertise nor the resources to perform these functions."
9. The Bench said: "Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the state. It accomplishes this in two ways: first, judicial restraint not only recognises the equality of the other two branches with the judiciary, it also fosters that equality by minimising inter-branch interference by the judiciary. Second, judicial restraint tends to protect the independence of the judiciary. When courts encroach on the legislative or administrative fields almost inevitably voters, legislators, and other elected officials will conclude that the activities of judges should be closely monitored.

CHAPTER 29 Public Interest Litigation

The concept of Public Interest Litigation (PIL) originated and developed in the USA in the 1960s. In the USA, it was designed to provide legal representation to previously unrepresented groups and interests. It was undertaken in recognition of the fact that the ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the poor, environmentalists, consumers, racial and ethnic minorities, and others.[1]

In India, the concept of PIL is closely related to the concept of judicial activism. The emergence of PIL is mainly attributed to the judicial activism role of the Supreme Court. In other words, the PIL is an outcome of judicial activism. In fact, the PIL is the most popular form (or manifestation) of judicial activism.

In India, the PIL was introduced in the early 1980s. Justice V.R. Krishna Iyer and Justice P.N. Bhagwati were the pioneers of the concept of PIL.

The PIL is also known variously as Social Action Litigation (SAL), Social Interest Litigation (SIL) and Class Action Litigation (CAL).

MEANING OF PIL

The introduction of PIL in India was facilitated by the relaxation of the traditional rule of *'locus standi'*. According to this rule, only that person whose rights are infringed alone can move the court for the remedies, whereas, the PIL is an exception to this traditional rule. Under the PIL, any public-spirited citizen or a social organisation can move the court for the enforcement of the rights of any person or group of persons who because of their poverty or ignorance or socially or economically disadvantaged position are themselves unable to approach the court for the remedies. Thus, in a PIL, any member of the public having 'sufficient interest' can approach the court for enforcing the rights of other persons and redressal of a common grievance.

The Supreme Court has defined the PIL as "a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

The PIL is absolutely necessary for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objectives. In other words, the real purposes of the PIL are:

(i) vindication of the rule of law,
(ii) facilitating effective access to justice to the socially and economically weaker sections of the society, and
(iii) meaningful realisation of the fundamental rights.

FEATURES OF PIL

The various features of the PIL are explained below:

1. The PIL is a strategic arm of the legal aid movement and is intended to bring justice within the reach of the poor masses,

[1] Balancing the Scales of Justice – Financing Public Interest Law in America (A Report by the Council for Public Interest Law) 1976, pp. 6–7.

who constitute the low visibility area of humanity.

2. The PIL is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claims seeking relief against the other and that other opposing such claim or resisting such relief.
3. The PIL is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest.
4. The PIL demands that violations of constitutional and legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed.
5. The PIL is essentially a co-operative effort on the part of the petitioner, the State or Public Authority, and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them.
6. In the PIL, litigation is undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, diffused rights and interests or vindicating public interest.
7. In the PIL, the role held by the Court is more assertive than in traditional actions; it is creative rather than passive and it assumes a more positive attitude in determining acts.
8. Though in the PIL court enjoys a degree of flexibility unknown to the trial of traditional private law litigations, whatever the procedure adopted by the court it must be procedure known to judicial tenets and characteristics of a judicial proceeding.
9. In a PIL, unlike traditional dispute resolution mechanism, there is no determination on adjudication of individual rights.

SCOPE OF PIL

In 1988, the Supreme Court formulated a set of guidelines to be followed for entertaining letters or petitions received by it as PIL. These guidelines were modified in 1993 and 2003. According to them, the letters or petitions falling under the following categories alone will ordinarily be entertained as PIL:

1. Bonded labour matters
2. Neglected children
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases)
4. Petitions from jails complaining of harassment, for pre-mature release and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a fundamental right
5. Petitions against police for refusing to register a case, harassment by police and death in police custody
6. Petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping, etc.
7. Petitions complaining of harassment or torture of villagers by co-villagers or by police from persons belonging to Scheduled Caste and Scheduled Tribes and economically backward classes
8. Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance
9. Petitions from riot-victims
10. Family pension

The cases falling under the following categories will not be entertained as PIL:

1. Landlord–tenant matters
2. Service matter and those pertaining to pension and gratuity
3. Complaints against Central/State Government departments and Local Bodies except those relating to item numbers (1) to (10) above
4. Admission to medical and other educational institution
5. Petitions for early hearing of cases pending in High Courts and Subordinate Courts

PRINCIPLES OF PIL

The Supreme Court evolved the following principles in regard to PIL[2]:

1. The Court in exercise of powers under Articles 32 and 226 of the Constitution can entertain a petition filed by any interested person in the welfare of the people who are in a disadvantaged position and thus not in a position to knock the doors of the Court. The Court is constitutionally bound to protect the Fundamental Rights of such disadvantaged people and direct the State to fulfil its constitutional promises.
2. When the issues of public importance, enforcement of the fundamental rights of large number of people vis-à-vis the constitutional duties and functions of the State are raised, the court treat a letter or a telegram as a PIL. In such cases, the court relaxes the procedural laws and also the law relating to pleadings.
3. Whenever injustice is meted out to a large number of people, the court will not hesitate to step in to invoke Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights which provide for a reasonable and fair trial.
4. The common rule of *locus standi* is relaxed so as to enable the court to look into the grievances complained on behalf of the poor, deprived, illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for violation of any constitutional or legal right.
5. When the Court is *prima facie* satisfied about violation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.
6. Although procedural laws apply on PIL cases, the question as to whether the principles of res judicata[3] or principles analogous thereto would apply depend on the nature of the petition and also facts and circumstances of the case.
7. The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a PIL.
8. However, in an appropriate case, although the petitioner might have moved a Court in his/her private interest and for redressal of the personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice.
9. The Court in special situations may appoint Commission or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Commission.

[2] *Guruvayur Devaswom Managing Committee* vs. *C.K. Rajan*, 2003.

[3] The principle that when a matter has been finally adjudicated upon by a court of competent jurisdiction it may not be reopened or challenged by the original parties or their successors in interest. Its justification is the need for finality in litigation. *Oxford Dictionary of Law*, Eighth Edition, 2015, p. 537.

10. The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.
11. The Court would ordinarily not step out of the known areas of judicial review. The High Court although may pass an order for doing complete justice to the parties, it does not have a power akin to Article 142 of the Constitution of India.
12. Ordinarily the High Court should not entertain a writ petition by way of PIL questioning constitutionality or validity of a statute or a statutory rule.

GUIDELINES FOR ADMITTING PIL

The PIL has now come to occupy an important field in the administration of law. It should not be allowed to become 'Publicity Interest Litigation' or 'Politics Interest Litigation' or 'Private Interest Litigation' or 'Paisa Interest Litigation' or 'Middle-class Interest Litigation' (MIL).

The Supreme Court, in this context, observed: "PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been, in recent times increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasise the parameters within which PIL can be resorted to by a petitioner and entertained by the court."[4]

Therefore, the Supreme Court laid down the following guidelines for checking the misuse of the PIL[5]:

1. The Court must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
2. Instead of every individual Judge devising his/her own procedure for dealing with PIL, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL filed and discouraging PIL filed with oblique motives.
3. The Court should *prima facie* verify the credentials of the petitioner before entertaining the PIL.
4. The Court shall be *prima facie* satisfied regarding the correctness of the contents of petition before entertaining the PIL.
5. The Court should be fully satisfied that substantial public interest is involved before entertaining the petition.
6. The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
7. The Court before entertaining the PIL must ensure that the PIL is aimed at redressal of genuine public harm and public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing PIL.
8. The Court should also ensure that the petition filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

[4] *BALCO Employees Union* vs. *Union of India*, 2001.

[5] *State of Uttaranchal* vs. *Balwant Singh Chaupal*, 2010.